

In the Matter Of:

UNITED STATES vs STATE OF GEORGIA

1:16-cv-03088-ELR

ANDREW WILEY, PH.D.

October 30, 2023



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October 30, 2023

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No.
1:16-cv-03088-ELR

vs.

STATE OF GEORGIA,

Defendant.

~~~~~

Video Recorded Deposition of:

ANDREW WILEY, Ph.D.

Monday, October 30, 2023

8:59 a.m.

Jones Day  
901 Lakeside Avenue  
Cleveland, Ohio 44114

Reported By: Sarah R. Drown, RDR, CRR

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GEORGIA DEPARTMENT OF EDUCATION

BRIAN MCCOLLUM, VIDEOGRAPHER

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1 titled "No, special education  
2 does not treat disability  
3 like a disease and is not  
4 'obsessed' with forcing  
5 students to conform."  
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1 VIDEO RECORDED DEPOSITION OF ANDREW WILEY, Ph.D.

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3  
4 THE VIDEOGRAPHER: We're on the  
5 record, 8:59.

6 You may swear in the witness.

7 - - - - -

8 ANDREW WILEY, Ph.D., of lawful age,  
9 called for examination, as provided by  
10 the Federal Rules of Civil Procedure,  
11 being by me first duly sworn, as  
12 hereinafter certified, deposed and said  
13 as follows:

14 EXAMINATION OF ANDREW WILEY, Ph.D.

15 BY MR. GILLESPIE:

16 Q. Good morning, Dr. Wiley.

17 A. Good morning.

18 Q. Would you please state your name for  
19 the record.

20 A. My name is Andrew Wiley.

21 MR. GILLESPIE: Counsel, can we  
22 agree to reserve all objections other than  
23 form or privilege for this deposition?

24 MS. JOHNSON: Yes.

25 MR. GILLESPIE: Thank you.

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1 Q. All right. Dr. Wiley, are you aware  
2 that you are being deposed today in the matter  
3 of the United States of America versus the state  
4 of Georgia?

5 A. Yes.

6 Q. Okay. Any reason you cannot give full  
7 and accurate testimony today?

8 A. No.

9 Q. Have you ever been deposed before?

10 A. I have not.

11 Q. You've just been placed under oath by  
12 our stenographer. Are you aware of what that  
13 means generally?

14 A. Yes.

15 Q. Okay. And you know that means that  
16 you're obligated to tell the truth today and  
17 that it's the same as though you were testifying  
18 in court?

19 A. Sure. Yes.

20 Q. There are a couple things that are  
21 different from a regular conversation today,  
22 with conducting a deposition, and I want to go  
23 over just some ground rules that we'll both try  
24 to abide by if we can.

25 A. Okay.

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1 Q. One is that, as you know, we have  
2 Sarah here who's going to be transcribing  
3 everything we both say today. One thing that  
4 makes her life more difficult is if we interrupt  
5 each other.

6 A. Okay.

7 Q. That often happens when you're  
8 anticipating what it is that I'm about to ask.  
9 Or, you know, it could happen with me with your  
10 answer. We're just going to try not to  
11 interrupt each other today to make Sarah's life  
12 a little bit easier. Okay?

13 A. Sounds good.

14 Q. Another thing with the transcription  
15 is being sure that you verbalize your answers.  
16 If I ask a yes or no question, you go "uh-huh"  
17 or "uh-uh," I understand what you mean, but it  
18 doesn't -- it's not clear in the record. And so  
19 I'll just ask you to verbalize your answer as a  
20 yes or no. It's not me trying to be rude, it's  
21 just me trying to make sure that we're clear  
22 about what the answer is.

23 Does that make sense?

24 A. Yes.

25 Q. If at any point you don't understand



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1 what I'm asking -- I try to ask good questions,  
2 sometimes I succeed, sometimes I don't. If you  
3 don't understand what I'm asking, please feel  
4 free to ask for clarification. If you answer  
5 the question I'm going to assume you understood  
6 what I asked.

7 A. Okay.

8 Q. Does that make sense?

9 A. Yes.

10 Q. And, finally, I'll ask that you  
11 provide me with full and accurate answers. And  
12 a bunch of attorneys have different ways of  
13 describing what that means. The example I use  
14 is if I ask you what you had for breakfast this  
15 morning and you say eggs but you also had a  
16 waffle and orange juice, the full and complete  
17 answer is to say I had eggs, waffle, and orange  
18 juice.

19 Does that make sense?

20 A. Yes.

21 Q. And, Dr. Wiley, if at any time you  
22 need to take a break for whatever reason -- I  
23 try to break about every hour or so, but if you  
24 need a break before then for any reason, just  
25 let me know and that won't be a problem. The

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1 only exception is if I have a pending question,  
2 I've asked a question, I'm waiting for an  
3 answer, I'll ask you to go ahead and answer that  
4 question before we take a break.

5 Any questions for me before we dive  
6 into it?

7 A. No, I don't think so.

8 Q. Great. Thank you.

9 Dr. Wiley, did you do anything to  
10 prepare for today's deposition?

11 A. Well, I wrote the report and I did  
12 meet with the lawyers, Melanie and Ed and Josh.  
13 We just talked about general expectations.

14 Q. And I don't want to get into any  
15 conversations that happened, --

16 A. That's fine.

17 Q. -- but I appreciate that.

18 So you said you met with attorneys for  
19 the state. Do you know approximately how long  
20 you met with them for?

21 A. Probably an hour and a half.

22 Q. Okay. Did you review any documents in  
23 preparation for this deposition?

24 A. No. We didn't have documents out to  
25 review. We just had a conversation.

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1 Q. Have you discussed this deposition  
2 with anyone else?

3 A. I have not.

4 Q. Okay. Have you done anything else to  
5 prepare for this deposition?

6 A. I reread materials, both my own report  
7 and the expert reports for the DOJ.

8 Q. So would those be the expert reports  
9 of Dr. McCart and Dr. Putnam?

10 A. Yes.

11 Q. Did you read anything else?

12 A. No.

13 Q. Dr. Wiley, have you ever been an  
14 expert in litigation before?

15 A. I have not.

16 Q. Are you currently serving as an expert  
17 in any other matters?

18 A. No.

19 Q. Have you ever testified in a legal  
20 proceeding of any kind?

21 A. No.

22 Q. In addition to your academic duties  
23 with Kent State, do you provide any type of  
24 consulting services?

25 A. I have done professional development

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1 in a couple different ways. You know, I  
2 sometimes provide professional development to  
3 school districts in Northeast Ohio.

4 I also provide some online  
5 professional development that isn't officially  
6 part of Kent State. It's our office of  
7 continuing development. So I have a couple of  
8 workshops that I provide online, and I provide  
9 those pretty regularly.

10 Sometimes I have students at Kent  
11 State who take those and sometimes I have  
12 students -- or people who are teachers or  
13 principals who participate in that.

14 Q. Is there anything else? Any other  
15 type of consulting that you do?

16 A. I don't think so currently.

17 Q. And when you talk about professional  
18 development, do you mind telling me a little bit  
19 more about that? What does that entail and what  
20 does that mean exactly?

21 A. Sure. So it's usually around a  
22 specific topic. For example, when I recently  
23 went to a school district, I met with all of  
24 their grade level teachers, K through 12, and we  
25 talked about classroom management.

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1           It was under the title of class-wide  
2       positive behavior support. How to do it, how to  
3       implement it, that kind of stuff. Strategies.

4           I also -- one of my online workshops  
5       is about classroom management as well.

6       Q.       You said you met with all grade level  
7       teachers, K through 12. So that's not just  
8       special education?

9       A.       That Kenston one was special education  
10      and general education.

11      Q.       Okay.

12      A.       In that case.

13      Q.       And is that typically the case? Or  
14      how is it usually?

15      A.       It depends. There are spaces between  
16      when I provide professional development. So  
17      I've also done it where it's just special  
18      education teachers, but more recently it would  
19      be both general and in special ed.

20      Q.       And how often do you do these  
21      professional development trainings?

22      A.       If you're counting the online workshop  
23      that I do through the office of continuing  
24      development, I do that at least two or three  
25      times a year. The others are more spaced out.

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1 It really depends. Some have seen my online  
2 workshops, that would be the case of the most  
3 recent one, and they've asked me to come and do  
4 similar things in person.

5 Q. And are these usually one-off events,  
6 or are they week long? How does that work?

7 A. Typically one-off. I mean, -- so the  
8 workshops are provided over a period of time,  
9 like a semester. So students complete, you  
10 know, different parts of the professional  
11 development.

12 Q. Okay. And is this through the  
13 university or otherwise?

14 A. So some that I do on my own are not  
15 through the university. And then the ones --  
16 there is a Kent State office, that's the office  
17 of continuing education and professional  
18 development. And so technically that is  
19 connected to Kent State. And I am paid through  
20 Kent State for that.

21 Q. And for the ones that are not through  
22 Kent State, is that through an entity, or is  
23 that just you individually?

24 A. That would be just me. And I've done  
25 it with other faculty as well.

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1 Q. Okay. Other than in this case, have  
2 you consulted with or provided any services for  
3 the state of Georgia?

4 A. No.

5 Q. Okay. Have you provided any other  
6 reports to the state of Georgia?

7 A. No.

8 Q. Than the one that is provided in this  
9 case, the United States versus the state of  
10 Georgia.

11 A. No other reports for Georgia.

12 Q. In the last five years or so have you  
13 spent any time consulting with state departments  
14 of education?

15 A. I have not. I mean, -- let me flesh  
16 that out just a little bit.

17 I have done some work, for example,  
18 with education pathways. So what that is is a  
19 pathway for training teachers who go to two-year  
20 colleges and then to transfer to four-year  
21 colleges.

22 Ohio, like many other places, has a  
23 shortage of all teachers, and especially special  
24 ed teachers. So over the past couple of years  
25 we've been working on different approaches.

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1           So technically that is involved by not  
2     the state Department of Education, but also the  
3     Department of Higher Education.

4           I've also done some things where I've  
5     worked with Department of Education, working on  
6     innovations and teacher education.

7           So I would say in a way we're doing it  
8     mostly through Kent State, but we're also  
9     providing consultation to these state department  
10    in Ohio on how to come up with innovative models  
11    and things like that.

12        Q.       Can you tell me a bit about that? So  
13    when you say that you've -- and I don't mean to  
14    be rude here, I'm just trying to make sure I  
15    track with what you've said.

16        A.       Sure.

17        Q.       On innovations on teacher education,  
18    what sort of work are you doing with the state  
19    on that?

20        A.       Yeah. So, I mean, an example  
21    previously would be that I worked with -- it was  
22    called the Ohio Deans Compact. And we were  
23    working on dual license, general ed and special  
24    ed teacher education. There are multiple  
25    universities that would come to together.



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1 That was the one where we also had The  
2 CEEDAR Center from the University of Florida  
3 support our work in trying to create dual  
4 license programs.

5 And so that would be an innovation, in  
6 the sense that mostly in Ohio you have special  
7 ed licensure, general ed licensure broken down  
8 by age bands. So an innovation would be to have  
9 a dual licensure.

10 I'll say for that -- for Kent State  
11 there were a few places that were able to do  
12 that successfully. We weren't able to do that  
13 successfully, but we created some special  
14 education minors that our general ed teachers  
15 take at Kent State to try to give them some  
16 competencies that will help them work with kids  
17 with IEPs, if that makes sense.

18 Q. And so if I'm hearing you correctly,  
19 and correct me if I'm not, you've consulted with  
20 the state on developing programs to help get  
21 teachers credentialed and ready to begin  
22 teaching in the state of Ohio; is that right?

23 A. That's correct, yeah. So it would be,  
24 you know, preservice teachers.

25 Q. Okay.

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1 A. So it was most university-based  
2 teacher education programs.

3 Q. And what exactly was your involvement  
4 in --

5 A. So I was one of --

6 Q. -- this?

7 A. -- several faculty, and we would meet  
8 with -- in this case we were working with what's  
9 middle childhood education. That was new for me  
10 when I moved to Ohio. A lot of other states  
11 break down like K through 6, maybe 7 through 12.

12 Middle childhood education is four  
13 through ninth grade. And so we had middle  
14 childhood faculty at Kent State and we had some  
15 special ed faculty.

16 And we would meet and we were trying  
17 to develop a -- it was an interesting time  
18 because there was a lot of pressure on  
19 universities to stay within four years for our  
20 students. So we tried to come up with a dual  
21 license program that would allow them to get  
22 middle childhood credential licensure and also  
23 special ed, which is K through 12 in Ohio.

24 Does that make sense?

25 So there were special ed faculty.

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1 There were middle childhood faculty who would  
2 attend these meetings in Columbus. But we would  
3 also do our work.

4 We were caught between the rock and  
5 the hard place of that four year constraint. So  
6 that's why we weren't able to complete a four  
7 year two license program that we thought was  
8 rigorous enough for preparing both special ed  
9 and middle childhood teachers.

10 Q. And what was the time frame for your  
11 involvement in this?

12 A. Oh, if you're going to ask me for  
13 exact years, I would have to take --

14 Q. Just in general.

15 A. -- a look.

16 I mean, it was over about three years.  
17 And I think that took place maybe,  
18 jeez, six, seven, eight years ago.

19 Now, we did revisit it within Kent  
20 State. That wasn't with the state. We sort of  
21 on our own got back together and said all right,  
22 let's look and see if things have changed. But  
23 from that there was sort of a mutual agreement  
24 that we weren't ready to create blended  
25 programs.

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1 Q. And you also earlier referenced  
2 education pathways. Is that the same thing as  
3 what we're talking about?

4 A. That's completely different.

5 Q. Okay.

6 A. So the state looked for people.

7 The other thing that I've done with  
8 the state is Ohio has something called TAG  
9 courses. This is Transfer Assurance guarantees  
10 [sic]. And there are four that are in education  
11 currently. One of them is the special ed course  
12 intro to exceptionalities. So for years --  
13 several years I served as a TAG reviewer.

14 So if a university created one of  
15 these courses, they would submit it to the  
16 state. And there were reviewers who had  
17 expertise who would look at it and say yes, this  
18 is -- to use a technical term, up to snuff. You  
19 know, we had learning outcomes that they were  
20 supposed to address.

21 As part of my work this -- this new  
22 grant that I wasn't part of getting -- but they  
23 had money for universities and two-year colleges  
24 to work together to try to work on education  
25 pathways.

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1 And education pathways, again, we have  
2 them in other, like, business, and I can't  
3 remember all of the different ones.

4 Education -- they didn't have them in many  
5 places. There were a few places.

6 So I worked with a faculty from  
7 Bowling Green, another four year, and a faculty  
8 from Tri-C, which is Cuyahoga Community College  
9 here in Cleveland. And what we were doing was  
10 try to come up with different models for how  
11 that might look if we were to create two-year  
12 degrees that could then transfer.

13 And to address, you know, both the  
14 shortage of teachers -- this was broader than  
15 special ed, but also a big focus, and rightfully  
16 so, is diversifying our teacher workforce. And  
17 so that was -- we also thought this is a way to  
18 do that.

19 And also concern about making this  
20 more affordable for students who would like to  
21 become a licensed teacher.

22 So that is different work in many  
23 ways.

24 I did have folks at Kent State who  
25 work on these education pathways who were kind

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1 of listening in as I did that work. Again, we  
2 were able to come up with something that we  
3 didn't think was the greatest in the world, but  
4 as we speak they're still looking at it and  
5 saying are we going to make this sort of an  
6 official -- it was a one-year program that  
7 students could take at community colleges that  
8 all public -- 13 public universities would  
9 accept and sort of bring students on to those  
10 four-year teacher ed programs.

11 It's not done yet. We've gotten some  
12 good feedback, but we're still waiting to see if  
13 the state sort of makes that official.

14 Does that make sense?

15 Q. It does.

16 And so if I'm hearing you correctly --  
17 so educational [sic] pathways also has to do  
18 with teacher credentialing --

19 A. Correct.

20 Q. -- in the area?

21 A. Yes.

22 Q. Like the other consulting work that  
23 you were referencing?

24 A. That's right.

25 Q. And is it ongoing?

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1 A. It is ongoing.

2 Q. Okay.

3 A. So my official work with that is over,  
4 but the three of us continue to, you know, meet  
5 with the state folks and consult with them.

6 And, you know, you have to bring  
7 people on board and make everybody feel like  
8 what we put together makes sense. So that's  
9 sort of where that is.

10 I think there's leadership support for  
11 it, but -- I don't know. I mean, I have worked  
12 a little bit in other states, but I think Ohio  
13 in particular, you really have to get consensus.  
14 There's not a lot of top down change. So these  
15 universities and two-year colleges have to say  
16 yes, we would like to do that.

17 Q. And when was the bulk of your work  
18 with education pathways?

19 A. I would say over the last two and a  
20 half or three years. Again, I can give you  
21 exact timelines later if you need it.

22 Q. No. That's fine.

23 You said you've done some other work  
24 with other states. What's that?

25 A. Well, I'm really talking about when

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1 I've been, for example, a student in Virginia  
2 and a teacher.

3 Q. Okay.

4 A. So less so about how that process --

5 Q. Sure.

6 A. -- of consulting works than my  
7 experience as a teacher.

8 And also when I was in Massachusetts  
9 as a postdoctoral research associate.

10 Q. Understood.

11 So other than teacher credentialing  
12 with the state of Ohio through education  
13 pathways and the other consulting that we  
14 discussed, have you consulted with any other  
15 state departments of education?

16 A. No other state departments of  
17 education.

18 Q. Okay. And we discussed the  
19 professional development you provided. Have you  
20 provided any other consultation services for  
21 school districts?

22 A. I don't think so. I would not say in  
23 a formal sense. I haven't provided, you know,  
24 consultation. I have interactions with  
25 different school districts around our, you know,



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1 preservice teacher prep, but no.

2 Q. Sure.

3 A. I'd say no.

4 Q. When was the last time you were in a K  
5 through 12 school working hands-on with  
6 teachers?

7 A. That one when I was in Kenston would  
8 be an example. That was the special ed and  
9 general ed. And it wasn't the beginning of last  
10 year, but the year before that.

11 When I was teaching field  
12 experience --

13 Q. I'm sorry. Just really quick.

14 A. Yes.

15 Q. You're referring to professional  
16 development?

17 A. I am referring to --

18 Q. Okay.

19 A. -- professional development.

20 Q. Great.

21 A. And so that's since I was in the  
22 schools and talking to teachers about their  
23 experiences.

24 I also -- when I was teaching field  
25 experience, which we're required in Ohio to have

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1 100 hours of our students in schools -- I'm not  
2 teaching that now, but I would meet with  
3 principals and teachers about our field  
4 experience students. And so those would be some  
5 of the last times that I was in schools.

6 Q. Okay. And when was that?

7 A. You're going to have to -- I'm going  
8 to have to pull up --

9 Q. Just --

10 A. Yeah.

11 Q. -- generally.

12 A. Five or six years ago.

13 Q. Okay.

14 A. I want to say.

15 So our faculty, you know, we divide  
16 the labor in different ways depending on what  
17 years it would be, but ...

18 Q. And would you be -- would you be in  
19 the school when school was in session  
20 advising --

21 A. It was --

22 Q. -- teachers?

23 A. -- during that time, because that's  
24 when our field experience was.

25 The other thing that we were doing is

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1 I had constant communication with our  
2 supervising teachers for field experience. So  
3 good or bad I would hear from them about, you  
4 know, what's going on.

5 We also sought a lot of feedback from  
6 them in terms of how our field students are  
7 doing, things that they would like for them to  
8 do while they were in their field experiences.

9 So some of that contact was more by  
10 email, but there were also times, especially  
11 with district leadership, where I would actually  
12 be in schools or in school districts talking  
13 about what we're trying to accomplish with our  
14 students and making sure that it worked well.  
15 You know, they have to volunteer to do it. So  
16 we had to keep our school districts happy.

17 Q. Absolutely.

18 A. Which usually is a win-win, you know.

19 Q. Yeah.

20 Just very briefly, Dr. Wiley. I'm  
21 noticing a little bit that you are anticipating  
22 my questions. Just --

23 A. I apologize.

24 Q. You're totally fine. I just want to  
25 make Sarah's life easy.

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1 COURT REPORTER: If you could slow  
2 down a little --

3 THE WITNESS: I will. I can do  
4 that, too.

5 MR. GILLESPIE: Yeah. You're doing  
6 great.

7 THE WITNESS: Sorry.

8 Q. So, Dr. Wiley, you referred to  
9 supervising teachers. So I'm just -- from the  
10 outside looking in, could you kind of describe  
11 what the structure was for this teacher --

12 A. Sure.

13 Q. -- professional development work you  
14 were talking about?

15 A. Yes. When I say supervising a teacher  
16 in the context of field experience, I'm talking  
17 about the teachers who were actually working in  
18 the school buildings.

19 Q. Okay.

20 A. And they're the ones who would  
21 supervise -- that's why we say supervising  
22 teacher -- our students who are preservice  
23 teachers who are getting their field experience  
24 hours.

25 Q. Thank you. I appreciate that.

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1                   When was the last time you taught in a  
2 K through 12 classroom?

3           A.           My last experience would have been as  
4 a behavior specialist. So if the question is  
5 when was I last employed as a special educator,  
6 it would have been when I was at Fairfax County  
7 in Virginia as a behavior specialist.

8           Q.           Have you ever consulted on PBIS  
9 implementation?

10          A.           I have, yes.

11          Q.           And when was that?

12          A.           That also would have been mostly  
13 during my time in Virginia. But again, when  
14 I am doing my workshops now on behavior  
15 management, classroom management, we do focus on  
16 that PBIS framework, those principles and  
17 practices of PBIS. That is very much sort of  
18 current with the way that people talk and think  
19 about behavior support in schools.

20          Q.           I use the word "consulted," but I  
21 guess maybe a more accurate descriptor for what  
22 you've done, is that professional development  
23 work? Correct?

24          A.           That would be correct.

25          Q.           Okay.

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1 A. Yes. Yes.

2 Q. And so I'll ask with MTSS  
3 implementation. Have you also provided  
4 professional development on MTSS implementation?

5 A. So consultation -- I think maybe the  
6 way you're thinking about consultation, not so  
7 much. I have done professional development.

8 In addition to the classroom  
9 management, I created a workshop that different  
10 faculty will teach. This is one of the online  
11 continuing development that was on response to  
12 intervention. We started that -- which is part  
13 of MTSS. Right. The behavior side is positive  
14 behavior support. Response to intervention is  
15 the academic side.

16 And so that, again, isn't consultation  
17 or professional development, but the idea is  
18 that -- you know, again, we get students at Kent  
19 State. We also get people who are principals or  
20 teachers at different schools who want to learn  
21 about how that's done, you know.

22 And then the other online workshop  
23 that I've done that also falls within that MTSS  
24 framework would be supplemental and intensive  
25 math instruction. So it's specific to, you

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1 know, what is supplemental and intensive.

2 And the supplemental really  
3 corresponds to tier two in the academic part of  
4 MTSS, and intensive instruction would be  
5 tier three, intensive instruction.

6 Q. Okay.

7 A. So ...

8 Q. And so you provide workshops on RTI  
9 and tier three --

10 A. Correct.

11 Q. -- MTSS?

12 A. Yes.

13 Q. Okay.

14 A. Workshops. Uh-huh.

15 Q. How often do you do that?

16 A. Again, I offer the one on math  
17 typically two times a year.

18 And then RTI, again, I'm sort of  
19 training with other faculty who want to also  
20 offer that one. But I usually do that one once  
21 or twice a year typically.

22 Q. Okay. And who's the audience  
23 typically for those workshops?

24 A. It is geared towards students and it  
25 is geared towards working professionals.

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1 Q. And we're talking about a couple  
2 different classes of -- classes. Categories of  
3 students. Kent State students is what you're  
4 referring?

5 A. Kent State students.

6 Q. Okay.

7 A. It is open and there have been a  
8 couple of times where, you know, we've had  
9 students from other universities because it's  
10 online and it's accessible. Graduate students  
11 and undergraduate students.

12 Q. Okay.

13 A. So all of those workshops have kind of  
14 graduate designations and undergraduate.

15 Q. And is that the same for the PBIS  
16 professional development that you've taught?

17 A. So, yeah, I'm calling it classroom  
18 management and that is the focus. But we do,  
19 again, put classroom management in that broader  
20 context of school-wide, positive behavior  
21 support.

22 And there actually is a part of that  
23 training that also focuses on intensive support  
24 for kids who don't respond to class-wide  
25 strategies.



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1 Q. And how often do you do the classroom  
2 management training?

3 A. Yeah, that would be the one I  
4 mentioned before. And so typically two or three  
5 times a year; that online workshop.

6 Q. So when you say you mentioned it  
7 before, I just want to make sure I have this  
8 year. Is the RTI and the classroom management,  
9 are those --

10 A. They're separate.

11 Q. -- one -- they're separate?

12 A. They're separate, yeah.

13 Q. Okay.

14 A. RTI has its own 3 credit professional  
15 development --

16 Q. Okay.

17 A. -- workshop and the classroom  
18 management its own.

19 And also the math is just a separate  
20 one. We found that there was a lot of interest  
21 in --

22 Q. Okay.

23 A. -- how do we help kids who are  
24 struggling in math.

25 Q. And you provide each of those a couple

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1 times a year?

2 A. Yes.

3 Q. Okay.

4 A. That's correct.

5 Q. Thank you --

6 A. Sure.

7 Q. -- for bearing with me --

8 A. Yes.

9 Q. -- on that.

10 Dr. Wiley, have you ever consulted on  
11 the adequacy on an educational environment?

12 A. I would probably need that clarified.

13 Q. Sure.

14 Have you ever advised an LEA or any  
15 sort of educating entity about whether they were  
16 providing adequate supports and services in a  
17 particular environment?

18 MS. JOHNSON: Object to form.

19 You can answer.

20 THE WITNESS: Okay.

21 A. I think that what would most closely  
22 fit with what you're describing was my work for  
23 three years as a behavior specialist.

24 So a lot of what I did as a behavior  
25 specialist is I would meet with teachers, I

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1 would meet with different support folks, and I  
2 did observe in classrooms and would talk about  
3 things like, you know, the behavior supports  
4 that were, were not in place. So I did that for  
5 several years.

6 That was at a time when functional  
7 behavior assessment was a brand new requirement  
8 of the law.

9 So I did both consulting around  
10 functional behavior assessment, where you're  
11 looking at those conditions, right, and saying  
12 okay, what's (unintelligible) behavior, what  
13 are the consequences that follow behaviors, so  
14 that we can try to develop a hypothesis about  
15 why this student's exhibiting a behavior.

16 So I think it's part of that work. I  
17 was absolutely with a school team evaluating the  
18 conditions around a student and talking about  
19 whether or not there were things that we could  
20 change in order to provide better support to the  
21 student, if that makes sense.

22 Q. When was the time period for that  
23 work?

24 A. '90 -- the late '90s.

25 Q. So --

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1           A.           Yeah. When I worked as a behavior  
2 specialist. It's also when I worked as an  
3 autism resource teacher, because that work would  
4 have been similar. Right. So I had a caseload  
5 of students. All had IEPs for autism spectrum  
6 disorder. And I would do some one-on-one work  
7 with the students.

8                       But mostly, because that was sort of a  
9 consultative role, like a resource -- autism  
10 resource meetings. I had lots of different  
11 schools and lots of different students. I met  
12 with the teachers quite a bit, talked about  
13 things that I saw, gave them suggestion for  
14 strategies to support them.

15                      And really -- my work as an autism  
16 resource specialist, I did a lot of work around  
17 behavior, and that's where Fairfax County  
18 created I think four total behavior specialists  
19 for the county.

20                      If you're familiar -- it's a very  
21 large county. I had one section of it with  
22 multiple high schools. And so I would meet with  
23 teachers, observe, help them conduct functional  
24 behavior assessments, help them develop behavior  
25 intervention plans.

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1 But all as a part of that you would  
2 evaluate what was going on with the student in  
3 whatever context they were in.

4 Q. So since that time, in the late '90s  
5 in Fairfax County, have you done any sort of  
6 consultation or analysis of the adequacy of an  
7 education environment?

8 A. I have not been --

9 MS. JOHNSON: Object to form.

10 You're fine. Go ahead.

11 Q. You can answer the question.

12 A. Yeah. Well, the only other example  
13 that I would provide would be when I was at the  
14 University of Massachusetts. That was a center  
15 for social development and education run by Gary  
16 Siperstein.

17 And he occasionally got contracts to  
18 consult with various schools about various  
19 things. And he received a request to evaluate a  
20 program that was for what we're calling here  
21 kids with behavior-related disabilities.

22 And in that capacity I worked with  
23 Gary and we did a program evaluation where we  
24 interviewed staff, we observed, reviewed  
25 records. We did a lot of things and generated a

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1 report that said here's where we see strengths,  
2 here's where we see weaknesses, and this is our  
3 advice in terms of how to improve your program.

4 Does that make sense?

5 Q. It does.

6 A. That definitely was consultative while  
7 I was at U Mass, Boston.

8 Q. And what entity was it that you were  
9 evaluating?

10 A. I will have to get -- it was part of  
11 that collaborative system. And so they had  
12 various names of collaboratives around the  
13 state. Again, I could find that if you need it,  
14 the exact name.

15 It was one of the schools within the  
16 collaborative. You know, this was the model  
17 that Massachusetts -- I think they still use,  
18 because I did take a peek as I was writing my  
19 report, where they have special schools for kids  
20 with behavior-related disabilities and it was  
21 one of those.

22 It's not jumping into my brain, I'm  
23 sorry, but I could find it later if you want.

24 Q. No. That's totally fine.

25 So, Dr. Wiley, fair to say in the last

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1 15 years or so, though, you haven't conducted  
2 sort of a third-party analysis of the adequacy  
3 of an educational environment?

4 MS. JOHNSON: Object --

5 A. I --

6 MS. JOHNSON: -- to form.

7 Go ahead.

8 A. Yeah. I mean, again, it depends on  
9 exactly what you're saying. But I think when  
10 you're saying that direct consultative work to  
11 do an in depth evaluation, yeah, that's probably  
12 accurate, yes.

13 Q. Have you provided any sort of  
14 consultative services or third-party evaluation  
15 of therapeutic or mental health supports and  
16 services provide by an LEA?

17 MS. JOHNSON: Object to form.

18 A. And if you can specify more -- so now  
19 are you talking about -- when you say  
20 therapeutic services, you're not talking about  
21 things like functional behavior assessment or  
22 those kinds of practices, you're talking more  
23 about mental health services --

24 Q. Correct.

25 A. -- specifically?

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1 Q. Yes.

2 A. No, I have not.

3 Q. Okay. Is there anything that we  
4 haven't discussed so far about the consultation  
5 work that you have or haven't done?

6 A. I don't think so.

7 Q. Okay. Would it be fair to say, then,  
8 Dr. Wiley, that your expertise, for purposes of  
9 your report, today is based on your experience  
10 as an academic?

11 A. I think, you know, like I said in my  
12 report, my experience is based on my knowledge  
13 about the research in the field.

14 It's also based on, you know, my  
15 experience in K-12 schools. And it's also based  
16 on my professional reasoning as a special  
17 educator who has worked quite a bit with kids  
18 with behavior-related disabilities.

19 Am I getting what you're asking?

20 Q. I think so, yeah.

21 A. Okay.

22 Q. No, absolutely.

23 A. Okay.

24 Q. And the purposes of these questions is  
25 just for me to get an understanding of --



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1 A. Sure.

2 Q. -- how you approached this.

3 A. Absolutely.

4 Q. When you say your experience from K  
5 through 12 schools, are you talking back to your  
6 experience back before -- back in the '90s, in,  
7 like, Fairfax County and the like? Is that the  
8 experience that you're referring to?

9 A. Yeah. I mean, when you're talking  
10 about my school-based experience, yeah. That's  
11 mostly what I'm talking about.

12 Q. Okay. And is it fair to say that your  
13 expertise for purposes of your report today  
14 relates to the status of academic research  
15 regarding the educational placement of students  
16 with behavior-related disabilities?

17 MS. JOHNSON: Object to form.

18 A. I would say that's true, but when you  
19 say "academic research," the research that I'm  
20 talking about is research that takes place in  
21 schools. So it's more of an applied research.

22 I think that that even confuses my own  
23 students, where they say "What is this  
24 research?"

25 They just go into a lab in the

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1 university, but the research that I'm talking  
2 about and the conferences that I go to and, you  
3 know, the conferences that we host, are all  
4 people who are doing research in the schools.

5 Q. I appreciate that clarification.

6 So fair to say, then, with that  
7 caveat, your expertise for purposes of your  
8 report today relates to the status of research  
9 regarding the educational placement of students  
10 with behavior-related disabilities?

11 MS. JOHNSON: Object to form.

12 A. That's part of my expertise, --

13 Q. Okay.

14 A. -- yes.

15 Q. What other -- what part am I missing  
16 or not appreciating there?

17 A. Well, -- oh, no. Sure. I mean,  
18 again, I'm talking about my experience as --

19 Q. Okay.

20 A. -- a special educator.

21 My experience directly consulting, all  
22 of those things together, but part of it is my  
23 understanding of academic research or applied  
24 research in the field.

25 Q. And not to belabor the point, when you

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1 say your experience directly consulting, that's  
2 the professional development work that we've  
3 talked through already, correct?

4 A. Yes.

5 Q. Okay. Dr. Wiley, what's your  
6 understanding of what this case is about?

7 A. My understanding of what this case is  
8 about is that the Department of Justice has said  
9 that the state of Georgia is unnecessarily  
10 segregating students with behavior-related  
11 disabilities through their GNETS program.

12 Q. And what is that understanding based  
13 on?

14 A. My understanding is based on reading  
15 the materials. I'm not going to get the  
16 legalese correct, but the letter of findings,  
17 the complaint letter.

18 Also the motions that were filed by  
19 the DOJ and also state of Georgia. And also the  
20 expert reports by Dr. Putnam and Dr. McCart.

21 Q. And what is your understanding of what  
22 the United States is seeking in this case?

23 A. I -- I -- I think I've read the  
24 recommendations by the experts. I haven't been  
25 completely clear about exactly what the DOJ --

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1 I'll be honest, but I think that what they would  
2 like is for the state of Georgia to change the  
3 services that they provide, such that those  
4 students can be appropriately and effectively  
5 served in general education environments.

6 That's probably summing things up.  
7 But my understanding is that sort of gets to the  
8 core of what the DOJ thinks would be -- what  
9 they think is needed.

10 Q. In forming your opinions, Doctor, was  
11 it your belief that the United States is seeking  
12 to discontinue the GNETS program?

13 MS. JOHNSON: Object to form.

14 Q. You can answer.

15 MS. JOHNSON: You can answer.

16 A. Okay. I think -- I'm making sure I  
17 get this right.

18 I think that I was getting sort of  
19 mixed sense of that, particularly from the  
20 expert reports, where it seemed like they were  
21 saying that programs like GNETS, which they  
22 called segregated, are sort of inherently  
23 harmful. But then there was a lot of  
24 qualification with we're talking about the  
25 majority of students.

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1                   So I think that because they're these  
2                   sort of qualifying phrases that were used, and  
3                   in the DOJ materials that I read, I would say  
4                   that I don't think that that's the purpose, is  
5                   to discontinue GNETS. Or discontinue the  
6                   provision of, you know, the full continuum of  
7                   placements.

8                   It could be, although I would have to  
9                   ask the DOJ folks, that they think that they  
10                  shouldn't be doing it through GNETS, they should  
11                  be doing it another way. But, to be honest, I  
12                  wasn't clear about what they're seeking to  
13                  happen in regards to GNETS specifically.

14                Q.           In forming your opinions, was it your  
15                  belief that the United States is seeking to  
16                  place students currently in GNETS in general  
17                  education classrooms without supports or  
18                  services all or nearly all the time?

19                           MS. JOHNSON: Object to form.

20                A.           Well, you said "without services or  
21                  supports," but I think that that is the claim,  
22                  is that if you provided services and supports,  
23                  these students could be served in general  
24                  education.

25                           So it's not my understanding that the

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1 DOJ or the experts were saying place students  
2 without services or supports.

3 Q. Thank you for that clarification.

4 In forming your opinions, Dr. Wiley,  
5 was it your belief that placement in GNETS is a  
6 last resort, limited to students who could not  
7 be successful in more integrated environments?

8 MS. JOHNSON: Object to form.

9 A. I wouldn't use the term "last resort."  
10 The continuum includes even additional  
11 placements, like residential, hospital,  
12 homebound. So when I think about it in terms of  
13 that required continuum of placements -- and  
14 last resort, again, I think has sort of a  
15 connotation that may influence the way that  
16 people think about it.

17 I think that GNETS and similar  
18 programs around the country would be viewed as  
19 an option for providing, you know, more  
20 intensive and more structured services for  
21 students through the IEP team saying, you know,  
22 this student needs that level of programming.

23 Q. Thank you, Doctor.

24 Dr. Wiley, before we get into kind of  
25 the meat of this here, I want to make sure that

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1 when we use some of the acronyms and, you know,  
2 language --

3 A. Sure.

4 Q. -- with which we're familiar that  
5 we're talking about the same things.

6 And so when you refer to general  
7 education settings, can you tell me what that  
8 means?

9 A. General education settings, when it  
10 refers --

11 THE WITNESS: -- and, by the way,  
12 Sarah, am I going slow enough? I never  
13 checked. Slower?

14 COURT REPORTER: Your speed hasn't  
15 come down.

16 THE WITNESS: Okay. I apologize.  
17 I'm going to work on that.

18 A. General education settings refers to  
19 places where students with disabilities and  
20 students with disabilities -- without  
21 disabilities are taught.

22 So we're typically talking about  
23 general education classrooms, but we might be  
24 talking about other settings within a school;  
25 cafeterias, gyms, and those kinds of things may

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1 be referred to as general education settings.

2 But primarily when I'm thinking about  
3 it, I'm primarily thinking about general ed  
4 classrooms.

5 Q. Okay. And so in your report when you  
6 refer to placement in general education or  
7 general education settings, are you thinking  
8 general education classrooms? Is that what  
9 you're referencing?

10 A. Yes.

11 Q. Okay.

12 A. Typically.

13 And I want to also say that, you know,  
14 I think that even though there may not be a lot  
15 of clarity in the reports, I think that there's  
16 a notion -- because people will also talk about  
17 zone schools, which is sort of a Georgia term,  
18 but it's the idea that students could be in  
19 self-contained classrooms but in general ed  
20 buildings. Right.

21 But when I think of general education  
22 settings, I am thinking about not necessarily  
23 self-contained classrooms, even if they're in  
24 their neighborhood schools, I'm talking about,  
25 again, places where students with and without



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1 disabilities are taught together.

2 Q. And could that be inclusive of a  
3 general education classroom with and without  
4 students with disabilities, where there are  
5 supports and services for the students with  
6 disabilities?

7 A. Yeah. I mean, if you're talking about  
8 general education classrooms, students with and  
9 without disabilities. And it could be where  
10 some of those services and supports are  
11 provided --

12 Q. Okay.

13 A. -- in the general education classroom.

14 Q. So, Dr. Wiley, when I refer to the  
15 ADA, what do you understand me to be referring  
16 to?

17 A. Americans with Disabilities Act.

18 Q. When I refer to the IDEA, what do you  
19 understand that to be?

20 A. Individuals with Disabilities  
21 Education Act.

22 Q. If I use ED, students with EBD or  
23 behavior-related disability, do you agree that  
24 those are roughly synonymous?

25 A. Yeah. ED, emotional disturbance,

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1 which is the federal term. Usually in research  
2 we use emotional, behavior disorders.

3 I will say that in this case  
4 behavior-related disabilities is not a typical  
5 term that's used in the field, but I understand  
6 it to relate -- and I think that if we use EBD  
7 kind of interchangeably it's okay, but these are  
8 kids who exhibit emotional, behavioral  
9 difficulties. Yeah.

10 Q. Thank you. I appreciate that.  
11 FAPE. What do you understand that to  
12 refer to?

13 A. Free and Appropriate Public Education.

14 Q. IEP.

15 A. Individualized Education Program.

16 Q. If I refer to FBA.

17 A. Functional behavior assessment.

18 Q. BIP.

19 A. Behavior intervention plan.

20 Q. If I refer to GNETS or the GNETS  
21 program.

22 A. Yeah. That's the Georgia Network of  
23 Educational Therapeutic services. I hope I got  
24 that. I've been using the shorthand with that  
25 one, and that's not one that I've used for

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1 decades. So ...

2 Q. If I refer to regional GNETS programs,  
3 you understand those as being --

4 A. Yes, --

5 Q. -- part of the 24 --

6 A. -- the 24 regions. Yes. Yes.

7 Q. And, finally, LEA?

8 A. Local Education Agency.

9 Q. Great. I appreciate that and helping  
10 to make the record clear there.

11 In your report, Doctor, you also refer  
12 to specialized placements in specialized  
13 settings or separate schools or separate  
14 placements at different points. Are these terms  
15 synonymous?

16 A. They are. Yes.

17 Q. Okay.

18 A. I would say. I mean, they refer to --  
19 and, again, I think probably for clarity I  
20 should have just stuck with the language that's  
21 in IDEA.

22 That's interesting.

23 Q. It might be the train.

24 A. Sounds like horses.

25 Self-contained classrooms in separate

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1 schools, but yes.

2 Q. Okay. And so -- and those terms all  
3 refer to --

4 A. Specialized, separate, yes.  
5 Self-contained. Yeah.

6 Q. Self-contained and separate --

7 A. Yes.

8 Q. -- schools. Okay. Great.

9 Do you consider these terms to be the  
10 same as segregated placement?

11 A. I think that they match in terms of  
12 their official definition, but, like I said in  
13 my report, I think segregated has connotations  
14 that don't help us think more clearly about what  
15 these placements are. That's my opinion.

16 Q. And for -- sorry. Let me withdraw  
17 that.

18 Would you say that GNETS then  
19 qualifies as a specialized setting under your  
20 definition?

21 A. Yeah. And my understanding is that  
22 there are separate schools but they're also  
23 self-contained classrooms. But I think the  
24 GNETS mostly oversees those kinds of separate or  
25 special placements.

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1 Q. And I think you anticipated my next  
2 question.

3 Do you draw -- no, that's great.

4 Do you draw a distinction between the  
5 GNETS centers and the GNETS school-based sites  
6 as to whether they qualify as a specialized  
7 setting?

8 A. They both would be considered  
9 specialized settings.

10 Q. Okay. Which of these terms that we've  
11 discussed, or another term, applies to a  
12 separate classroom in a general education school  
13 where students spend portions of their day?

14 A. Which of these terms?

15 Q. Yeah.

16 A. I think, if we're trying to keep the  
17 conversation clear, then typically those are  
18 referred to as self-contained classrooms.

19 Q. Okay. And that would be the case even  
20 if students aren't there for the entirety of the  
21 school day?

22 A. Clarify that for me. So it would  
23 apply, self-contained classrooms, even if they  
24 weren't -- say it one more time. I'm sorry.

25 Q. If they weren't there for the entirety

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1 of the school day. If --

2 A. Yeah, --

3 Q. -- students --

4 A. -- they would be considered  
5 self-contained classrooms.

6 Again, there are distinctions that are  
7 made in the data that are reported to IDEA in  
8 terms of percent of time spent in general  
9 education. Right. I think we're probably all  
10 familiar with the 80 percent or above, and then  
11 there's, you know, between.

12 So in that sense they're sometimes  
13 referred to -- if it's 80 percent or above in  
14 general education classrooms, that's called full  
15 inclusion in the law. Then there's partial  
16 inclusion, and then -- so students may be in  
17 self-contained classrooms or they may be in  
18 resource rooms, but usually those distinctions  
19 are made based on the amount of time that  
20 students spend in those particular classrooms.

21 It's tricky because it's not -- it's  
22 very individualized and it's not, you know, one  
23 placement sort of package for every student.

24 Q. Do you consider alternative schools to  
25 be specialized settings?

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1 MS. JOHNSON: Object to form.

2 Q. You can answer.

3 A. Okay. Yeah, the alternative schools  
4 terms also gets confusing, because I know that  
5 there are schools that serve entirely students  
6 with disabilities.

7 I know that there are alternative  
8 schools for kids who are at risk for dropping  
9 out, kids who have discipline problems, academic  
10 problems.

11 So alternative schools I like to think  
12 about -- and sometimes those alternative schools  
13 do serve kids with IEPs. So that again kind of  
14 blurs a little bit, but I would consider that to  
15 be a separate school or a special school that's  
16 meant to serve the needs of kids who were not  
17 successful in general education. If that makes  
18 sense.

19 Q. And so I guess -- I'm trying to make  
20 sure that when -- in your report when you talk  
21 about specialized settings and separate schools,  
22 would you include alternative schools within  
23 those -- within those --

24 A. What I would say --

25 Q. -- (unintelligible) terms?

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1           A.           Yeah. What I would say is that in the  
2 special education research, for example, there  
3 sometimes is overlap. When people are talking  
4 about alternative schools, they can be sometimes  
5 schools --

6           Q.           Okay.

7           A.           -- that fit into these other  
8 categories.

9                       In terms of GNETS I am mostly talking  
10 about schools that serve specifically students  
11 with disabilities.

12          Q.           So just to make sure I'm  
13 understanding, they can be, but aren't  
14 necessarily the same as what you call the  
15 specialized setting?

16          A.           For the -- like a special education  
17 specialized setting.

18          Q.           Okay.

19          A.           It's tricky because there's sort of a  
20 Venn diagram. There's a bit of an overlap. But  
21 mostly I'm talking about schools that are  
22 separate from general education schools.

23          Q.           And so the Venn diagram, I guess, --  
24 let me withdraw that.

25                       Let me switch gears a bit.



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1 Dr. Wiley, I want to be sure you and I  
2 are on the same page today when we talk about  
3 appropriate and inappropriate in the context of  
4 educational placements.

5 A. Okay.

6 Q. And so, Dr. Wiley, would you agree  
7 that not all separate placements -- and I'll use  
8 these terms interchangeably that we just  
9 discussed -- are inherently appropriate for  
10 students with the emotional and behavioral  
11 disabilities?

12 A. I would say that no placement is  
13 inherently appropriate. It's placement that is  
14 meant to be the best place where you can  
15 implement the IEP, and that's the appropriate  
16 part of it.

17 Q. And when you say that no placement is  
18 inherently appropriate, why is that?

19 A. Because it's not the place, it's the  
20 individualized education program that the  
21 student -- that determines appropriateness.

22 Now, I think, as I said in my report,  
23 you know, we have the continuum of alternative  
24 placements because what we're supposed to do is  
25 determine what that IEP is. And that's the --

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1 you know, how we sort of operationalize the free  
2 and appropriate public education part of.

3 And then we determine what placement  
4 would be most appropriate for implementing that  
5 particular IEP. Yeah, that IEP.

6 So I think you can't really -- and I  
7 think I talked about this. I was citing someone  
8 who knows more than I do about a lot of this  
9 stuff. But that least restrictive appropriate  
10 environment. So the two things are definitely  
11 related.

12 Q. And would you agree that a setting can  
13 be separate without being specialized?

14 MS. JOHNSON: Object to form.

15 A. A placement can be separate without  
16 being specialized. You'll just have to unpack  
17 that a little bit more for me. What do you mean  
18 without being specialized?

19 Q. Well, let me try it this way.

20 So in your expert opinion what  
21 features must a separate placement have in order  
22 to be considered as potentially appropriate for  
23 students with EBD?

24 A. So the appropriate thing still applies  
25 where you have an individualized education

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1 program of services and supports. That IEP has  
2 to be implemented in that setting in order for  
3 it to be considered appropriate.

4 What's special about the special  
5 placements is that it may have allowances for  
6 the implementing aspects of that student's  
7 program that are not in another setting.

8 So I think another thing I talked  
9 about in the report is that general education  
10 has some inherent limitations of implementation,  
11 and that's why we have the continuum of  
12 alternative placements, so that we have other  
13 ways.

14 I'm going on. I could probably talk  
15 more specifically to what you asked, but you  
16 just tell me if you want me to try again.

17 Q. No. I think --

18 A. Okay.

19 Q. I think we're generally on the same  
20 page, but what I'm -- what I would hope -- what  
21 I'm hoping to learn from you, Doctor, is, what  
22 are some of the very basic components an  
23 educational placement would need to have to  
24 potentially be appropriate --

25 A. Okay.

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1 Q. -- as a specialized setting for  
2 students with EBD?

3 A. Okay. So not any educational  
4 environment but a specialized setting.

5 Q. Correct.

6 A. Yeah. And, again, it's driven largely  
7 by the IEP.

8 But some of the things that I think  
9 you're talking about would be highly structured  
10 behavioral support. I think it would be  
11 intensive academic instruction, because a lot of  
12 these kids have significant learning problems  
13 and academic achievement deficits. Those things  
14 can be provided in a lot of different ways.

15 Again, I have experience working in a  
16 school specifically for kids with EBD. So we  
17 had school-wide -- actually, PBIS was pretty new  
18 at that time, too, but we did have school-wide  
19 behavior programs, like the level system and  
20 positive reinforcement through, like, point  
21 sheets.

22 So those are just examples of the  
23 kinds of things that might constitute a  
24 structured organized kind of behavior support  
25 program. Then it can be individualized from

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1 there, depending on what the needs of the  
2 particular student are in the specialized  
3 setting. And it's the same thing with the  
4 academic instruction.

5 Driven by the IEP. It has to target  
6 specifically what are the individual needs of  
7 that particular student.

8 Q. In -- so, Dr. Wiley, as I understand  
9 what you're saying, the specific supports and  
10 services of the environment will be tailored to  
11 the students that are in the environment, but  
12 there are also some general attributes that you  
13 would expect a specialized setting like this to  
14 have when serving students with EBD. And the  
15 two that you identified, I think, were highly  
16 structured behavioral support and intensive  
17 academic instruction.

18 Is there anything else?

19 MS. JOHNSON: Object to form.

20 A. Well, yeah, there can be some other  
21 things. There can be things like social skills  
22 instruction. There can be things like  
23 communication with the family.

24 There can be, you know -- there are  
25 a lot of sort of -- I didn't touch on these

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1 a lot in the report, but relational kinds of  
2 approaches where you try to build relationships  
3 with the students that you're working with.

4 So I think to cover all of those  
5 things -- and I do think that in some of the  
6 research that I covered there were some of these  
7 aspects that I'm talking about, like the highly  
8 structured behavior management and the  
9 appropriately intensive academic instruction, to  
10 meet those needs.

11 I'm being pretty general, but I hope  
12 I'm getting at some of the things that you're  
13 talking about that you would expect to see or  
14 would typically see in a special program.

15 And I think we're being broad, where  
16 we're saying a self-contained classroom and also  
17 a special school.

18 Q. That's right.

19 And I think, to the extent this is  
20 helpful, you know, what I'm trying to talk about  
21 here is what sort of capacity would you expect a  
22 setting to have to be specialized versus maybe  
23 the specifics which you're saying track along  
24 with the student's IEP.

25 A. Sure.

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1 Q. So I guess, you know, is there  
2 anything else when it comes to a settings  
3 capacity to educate students with emotional,  
4 behavioral disabilities that you would expect to  
5 see?

6 A. Right.

7 MS. JOHNSON: Object to form.

8 A. Yes. In the capacity to deliver those  
9 services that I'm talking about kind of  
10 generally, because we're out of the context of  
11 an individual student, but I think that it is  
12 right to say that these are the things that you  
13 would expect to see, structured -- behavioral  
14 supports structured.

15 And that's broad. Right. That can  
16 include, like, instruction and replacement  
17 behaviors and social skills and the capacity to  
18 deliver that. And that's looking at the  
19 environment, looking at the people who are  
20 delivering it, making sure that they have the  
21 resources that they need in order to deliver it.

22 So, yeah, again, when I say in the  
23 report -- and I know, you know, we've talked a  
24 little bit about -- places -- the place that  
25 facilitates. Right. It's not place by itself

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1 that makes all of these things happen, whether  
2 we're talking about general education, we're  
3 talking about a special placement.

4 I'm going fast again. I can tell. I  
5 apologize.

6 Q. Thank you, Doctor.

7 Would you agree that you would also  
8 expect these settings, in addition to this  
9 capacity, to have certified -- appropriately  
10 certified staff?

11 MS. JOHNSON: Object to form.

12 A. I would expect that the teachers would  
13 be licensed teachers.

14 I do think that they have to have  
15 access to related services providers, as  
16 indicated in students IEPs, and, ideally,  
17 certified administration; leadership,  
18 principals.

19 Yeah, I think certification training  
20 is important. I know that this has been a  
21 challenge in general ed and special ed, making  
22 sure, you know, we have enough of those folks to  
23 meet the needs of these kids. But yes.

24 Q. And would you also -- in order for a  
25 separate placement to be considered



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1 appropriately specialized, would you also agree  
2 that they would have to implement, let's say,  
3 IEPs with fidelity?

4 MS. JOHNSON: Object to form.

5 A. Yes. Appropriateness, as we  
6 understand it in the profession, means that  
7 we're implementing the individualized education  
8 program as well as we can.

9 Q. And so in order to be an appropriate  
10 setting, would the -- would the setting also  
11 have to implement a student's BIP with fidelity?

12 MS. JOHNSON: Object to form.

13 A. Yeah. Regardless of the setting. If  
14 the determination was that the student needed an  
15 FBA based BIP, then they would have to implement  
16 it to be able to say that that student is  
17 receiving their IEP.

18 Q. Are there any baseline therapeutic and  
19 mental health services and supports that you  
20 would expect to see in any specialized setting  
21 for students with behavior-related disabilities?

22 MS. JOHNSON: Object to form.

23 A. Baseline's kind of a broad term. I  
24 know that I'm sort of pulling things out, you  
25 know, really quickly, but I would expect to see

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1 individualized behavior supports and academic  
2 instruction in any setting for me to determine  
3 whether or not it's appropriate. But that's  
4 also true in a special setting.

5 Again, a special setting provides the  
6 conditions where these things are more readily  
7 done. But whether you're in general ed or a  
8 special setting, to say that the student is, you  
9 know, having their needs met, then the IEP has  
10 to be implemented.

11 Did I get that one, or did I miss that  
12 one? I want to make sure I'm answering your  
13 question.

14 Q. Let me -- I think so, but I want to  
15 make sure as well that -- in order for a setting  
16 to be appropriate, a separate setting to be  
17 appropriate for students with behavior-related  
18 disabilities, would you agree that they would  
19 have to be able to implement the students' BIPs  
20 with fidelity?

21 MS. JOHNSON: Object to form.

22 A. If the student has a BIP, then that  
23 would be correct.

24 Q. And you would expect most students who  
25 are in a specialized setting because of a

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1 behavior-related disability to have a BIP,  
2 correct?

3 MS. JOHNSON: Object to form.

4 A. When you say BIP, I think that -- you  
5 know, one of the tricky parts here is that there  
6 is BIP as it's understood in the law since 1997.  
7 You have functional behavior assessment,  
8 behavior intervention plan.

9 I would expect that student to have  
10 behavior supports that are appropriate to their  
11 need and, again, similar to like I'm describing  
12 in my own experience.

13 And also in some of the research where  
14 they've talked about positive behavior support  
15 in special schools that you would have what's  
16 called tier one. And in a special school that  
17 might be a highly structured behavior program.

18 But then you might have students who  
19 need something more. So that could be an  
20 individualized behavior intervention plan or  
21 individualized behavior interventions.

22 If they have one formally as part of  
23 their IEP, then wherever that student is you  
24 would expect that BIP to be implemented.

25 So I just want to make sure that we're

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1 clear that there is sort of this, you know,  
2 formal legal version. And it's one of the  
3 challenges, I think, of implementation, is, you  
4 know, when do we have to have a functional  
5 behavior assessment, behavior intervention plan.

6 We need to make sure for kids with EBD  
7 that they're receiving the appropriate type and  
8 intensity of behavior intervention that they  
9 need in order to be -- to make appropriate  
10 progress.

11 Q. And you would expect a specialized  
12 setting to have the capacity to do -- to provide  
13 exactly those -- that level of services and  
14 supports, correct?

15 MS. JOHNSON: Object to form.

16 A. I would expect, yes.

17 Q. Okay. And there are some things even  
18 more basic that we haven't discussed here that  
19 you would expect a specialized setting to have  
20 in order to be appropriate for students, right,  
21 such as a habitable building, correct?

22 MS. JOHNSON: Object to form.

23 A. And I know that this was part of the  
24 reports. I'm a little weary of going here too  
25 much. You're probably not going to make me.

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1 But I would expect in any school,  
2 general ed, special school, any school, that  
3 there would be sort of basic levels of safety  
4 and cleanliness. But that's as deep as I go  
5 when it comes to understanding, like, what  
6 constitutes a -- go ahead.

7 Q. I'm speaking generally here to get an  
8 understanding of the -- again, the --

9 A. Yeah.

10 Q. -- baseline for a setting --

11 A. It --

12 Q. -- to be appropriate for students.

13 A. Yeah. Your question is would you  
14 expect a school to be habitable. I would say  
15 yes.

16 Q. Okay. And without the -- again, this  
17 baseline of services and teacher certifications  
18 and all of these things that we've just  
19 discussed, the setting would be inappropriate  
20 for the education of students with  
21 behavior-related disabilities, correct?

22 MS. JOHNSON: Object to form.

23 A. Wherever these students are taught,  
24 they need teachers who are trained and ideally  
25 certified. You know, again I don't want to go

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1 to, like, the biggest problems that we have in  
2 the field, but there are emergency certified  
3 teachers in both general education and special  
4 education who end up working with students with  
5 EBD.

6 So in that sense I would say yes, we  
7 need to have people who can implement IEPs and  
8 we need to think about how we make that happen,  
9 whether it's in, you know, special settings.  
10 And to the extent that it's possible and  
11 appropriate in other settings as well.

12 Q. But without this capacity to serve  
13 these students, would you agree that the setting  
14 would be inappropriate for students with  
15 behavior-related disabilities?

16 MS. JOHNSON: Object to form.

17 A. I guess what I'm stuck on is, like,  
18 setting. Right. Where you're saying, like, I'm  
19 making a judgment that the place itself is  
20 inappropriate. And I think that, again, it's  
21 not the place, it's the services that are  
22 provided.

23 So if you're asking me, like, does  
24 that make the setting inappropriate, I mean, no.  
25 I think that a setting like a special school is

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1 appropriate and required, you know, but we want  
2 to make sure that wherever we're providing IEPs  
3 that, you know, that we're able to do that.

4 Q. So to make sure I'm understanding you,  
5 to make sure that I'm understanding what you're  
6 telling me, Doctor, you're distinguishing  
7 between the physical location, and then the  
8 services and everything else that are being  
9 provided within that location?

10 A. Yeah. And I think when you use the  
11 term -- did I go too fast?

12 When you use the term setting, I'm  
13 thinking about the physical place, and that's  
14 throwing me a little bit.

15 Q. Okay.

16 A. So I think that what I want to say is  
17 you know, if you mean these are baseline for a  
18 program to be appropriate. Right.

19 Q. Sure. So --

20 A. Go ahead.

21 Q. If I can, let me ask that question,  
22 then.

23 So without these -- these -- this  
24 basic capacity that we've discussed, the program  
25 would be inappropriate to serve students with

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1 behavior-related disabilities, correct?

2 MS. JOHNSON: Object to form.

3 A. And now we're talking about an  
4 individualized education program. And the  
5 placement is meant to be the last decision, the  
6 LRE, and that placement and the program that  
7 occurs there has to be able to implement the  
8 IEP.

9 And, again, this is where we say  
10 independent of setting if general education  
11 can't implement those services, then it's not  
12 appropriate.

13 And then we would expect that a more  
14 intensive specialized program would have the  
15 capacity to implement the IEP as written.

16 So in that sense I say yes, the  
17 program has to implement the IEP.

18 Q. It has to be able to implement the  
19 IEP --

20 A. Correct.

21 Q. -- in order to be appropriate to have  
22 students?

23 A. Yeah. IEP and appropriate, when we  
24 say Free and Appropriate Public Education, are  
25 linked.



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1 Q. So what would you call a separate  
2 setting that lacked this capacity to serve  
3 students and to fulfill their IEPs?

4 MS. JOHNSON: Object to form.

5 Q. Is there a term you would use for  
6 that?

7 MS. JOHNSON: Object to form.

8 A. Is there a term I would use for --

9 Q. Would you consider that to be  
10 segregation?

11 MS. JOHNSON: Object to form.

12 A. Well, I think one of the distinctions  
13 that I try to make at the beginning of my  
14 report -- and because people are very focused on  
15 the physical aspects of what we're calling  
16 integration and segregation -- is that  
17 instructional inclusion is the most important  
18 part of special education.

19 And so I think that students can be  
20 segregated in that sense when they're placed in  
21 general education programs.

22 If they're there and the general  
23 education is not able to provide the intensive  
24 supports that the student needs, then I would  
25 consider that instructionally segregated.

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1                   Again, I've given my reasons why I'm  
2                   not a fan of that term exactly, but I would use  
3                   excluded. You know, we use inclusion and  
4                   exclusion.

5                   To be included in any setting it has  
6                   to be able to provide the individualized  
7                   supports that are defined in that individualized  
8                   education program. General ed can't do that  
9                   with every kid with behavior-related  
10                  disabilities. I think we see that pretty  
11                  consistently in the research and over time.

12           Q.           And I guess, Doctor, what I'm getting  
13           at is -- I want to get an understanding of how  
14           you classify a setting that students with  
15           disabilities are placed in that's separate from  
16           general education when that setting lacks the  
17           capacity to fulfill that student's IEP.

18                       MS. JOHNSON: Object --

19           Q.           What would you consider that to be?

20                       MS. JOHNSON: Object to form.

21           A.           And, again, because -- I'm not going  
22           to speak to, like, what I know about the  
23           capacity of, you know, specific programs --

24           Q.           I'm just asking generally.

25           A.           -- in Georgia. But what I would say

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1 is that it's a -- yeah. I mean, on an  
2 individual student level, we would say --  
3 because if you think about special schools, you  
4 may have students who you implement their IEP in  
5 a special school and then there's more to the  
6 continuum. Right.

7 And there are students who may have to  
8 then -- we say, well, you know, we're not able  
9 to appropriately serve this student, and they  
10 might be placed in a residential setting or a  
11 hospital. Right.

12 So in that sense we can say this  
13 setting is not appropriate because we're not  
14 able to implement an IEP to the extent that it  
15 meets the needs of this individual student.

16 So what I would say on an individual  
17 basis is if it's not able to implement the IEP,  
18 then it's not the LRE for that student. That  
19 may be residential, may be a hospital setting,  
20 may be homebound.

21 Is that getting close to where you're  
22 talking about?

23 Q. You're saying that if a program's  
24 unable to meet the needs of a student, then they  
25 need to be in a more restrictive --

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1           A.           They may. It may be that they're  
2           unable to implement the IEP because the  
3           student's needs are such that you can't provide  
4           the intensity that a residential setting, for  
5           example, might.

6           Q.           What if the program could provide the  
7           level of services that the student needs but for  
8           whatever reason does not?

9                       MS. JOHNSON: Object to form.

10          A.           I mean, I would have to consider  
11          reasons that they don't.

12                       But I think the IEP is the important  
13          thing and that we need to focus on implementing  
14          that IEP. And, again, the IEP is thought of  
15          first, and then the placement where it's most  
16          likely to be implemented appropriately and  
17          effectively is selected.

18                       And it's not just the place. Yes, it  
19          is the program that is most able to implement  
20          that IEP.

21          Q.           So you've talked a bit about the  
22          baseline features you would expect to see for a  
23          setting to be specialized and to be adequate to  
24          serve or appropriate to serve students with  
25          disabilities. Now I want to talk about the

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1 inverse.

2 A. Okay.

3 Q. Are there some things you agree would  
4 make a separate setting categorically  
5 inappropriate even if it's otherwise  
6 specialized?

7 MS. JOHNSON: Object to form.

8 A. Yeah. I mean, -- categorically. So  
9 you mean, like, not just individual students?

10 Q. Categorically.

11 A. I mean, -- so I think what you're  
12 getting at is that you have to have a program  
13 that implements research-based services and  
14 programs, things that the student needs and in  
15 terms of addressing whatever the full range of  
16 needs is for that student.

17 And, I mean, I would have to have  
18 whatever setting it is -- or the program has to  
19 have the capacity to implement those. And that  
20 would mean resources and it would mean the  
21 training and it would mean, you know, all of  
22 those kinds of things that are required to  
23 implement the IEP specific to the individual  
24 student.

25 Q. And again this goes back to, again,

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1 the universe of what we were saying earlier. If  
2 a program doesn't have the capacity to fulfill  
3 the student's IEPs with fidelity, then that  
4 makes it inappropriate, correct, for the  
5 students?

6 A. For the student, yeah.

7 Q. Okay.

8 A. And it could be for a variety of  
9 reasons.

10 Q. Would you agree that a setting that  
11 lacked appropriately qualified staff would be  
12 categorically inappropriate?

13 MS. JOHNSON: Object to form.

14 A. You have to have the capacity to  
15 implement the IEP and you have to have people  
16 who have the training to be able to do that.  
17 Teachers and in some cases related service, you  
18 know, as required in IDEA.

19 Q. So would you agree that a setting that  
20 provided no therapeutic and mental health  
21 supports and services would be categorically  
22 inappropriate for the mass -- for the vast  
23 majority of high-need students with  
24 behavior-related disabilities?

25 MS. JOHNSON: Object to form.

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1           A.           Again you're saying no therapeutic  
2           supports, mental health services because -- it's  
3           going to vary by individual. I'll just say it  
4           could still be appropriate if it's not providing  
5           something that a student doesn't need.

6                       And, you know, I think one of the  
7           tricky parts about this case in trying to figure  
8           it out is, you know, when we say, like, what is  
9           the appropriate therapeutic services and  
10          supports, that's a highly individualized  
11          decision. And even beyond that --

12          Q.           And -- I'm sorry. I don't want to --

13          A.           Oh, that's fine.

14          Q.           I don't want to be rude, Doctor, but  
15          I -- we're going to talk about the case and  
16          we're --

17          A.           Okay.

18          Q.           -- going to have plenty of time for  
19          that, but I'm just -- I'm still trying to get an  
20          understanding --

21          A.           In general.

22          Q.           -- in general and --

23          A.           Right.

24          Q.           -- in the abstract.

25          A.           Right.

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1 Q. So if there's a separate setting that  
2 doesn't have -- that doesn't provide any  
3 therapeutic or mental health supports and  
4 services, would you agree that that is  
5 categorically inappropriate for the vast  
6 majority of high-need students with  
7 behavior-related disabilities?

8 MS. JOHNSON: Object to form.

9 A. So if you're asking me that they  
10 provide zero, like literally none, and I'm  
11 lumping in, and tell me if this is  
12 appropriate -- therapeutic services would mean  
13 like special education services, functional  
14 behavior assessment, behavior (unintelligible)  
15 plans, everything --

16 COURT REPORTER: I'm sorry.

17 THE WITNESS: Oh. Oh.

18 COURT REPORTER: You lost --

19 THE WITNESS: Yeah. Yeah.

20 COURT REPORTER: -- me.

21 A. I'll just say that when you say mental  
22 health supports and then therapeutic services,  
23 again, it's a little bit of an unusual term for  
24 special education, but that refers to  
25 educationally therapeutic. Is that right?



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1                   So they're providing no specialized  
2                   education, behavior management. Zero. Right.

3                   But I think the reason why the  
4                   question trips me up a little bit is it seems to  
5                   imply that we know what sort of a baseline is of  
6                   the exact level of therapeutic services that one  
7                   of these programs should have.

8                   And I don't think that's what we have  
9                   from the research that we have so far, is to be  
10                  able to say here's what it looks like. We can  
11                  go in --

12                Q.           And the baseline is what the students  
13                  need, right? That's what we've been talking  
14                  about. The baseline that a setting would need  
15                  is whatever is needed to meet the needs of the  
16                  individual --

17                A.           Of the --

18                Q.           -- students there?

19                A.           -- individual students that it serves.  
20                Okay.

21                Q.           But we're talking about -- so my  
22                  question's talking about separate settings.  
23                  Right.

24                            So in order to meet the LRE,  
25                  presumably the student would have some level of

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1 a need, right, beyond zero.

2 And so, again, my question is, would  
3 you agree that a program that offered no  
4 therapeutic or mental health supports and  
5 services would be categorically inappropriate  
6 for the vast majority of high-need students with  
7 behavior-related disabilities?

8 MS. JOHNSON: Object to form.

9 A. Well, if you're saying zero, then I  
10 would go beyond the vast majority. I don't know  
11 of a setting like that where it's zero. In that  
12 case you're not providing special education at  
13 all. And so under those exact conditions, I  
14 would say yeah, that would be inappropriate.

15 Q. And if a separate program didn't  
16 provide individualized services, would that also  
17 be inappropriate for the vast majority of  
18 students with behavior-related disability?

19 MS. JOHNSON: Object to form.

20 A. I mean, again, not to dance around it,  
21 but what the individualized services are -- and  
22 what I was trying to say a little bit earlier is  
23 what's typical from research and also my  
24 experience in a special school is that you have  
25 some programmatic things, I'll call it that, and

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1 some individualized things.

2 And so for some needs the programmatic  
3 aspects of a special school may be enough to  
4 meet the student's needs, but if there are  
5 individual needs beyond that, then I would say  
6 yes, the program to be appropriate has to meet  
7 those individual needs in addition.

8 But it's going to vary. Right. You  
9 do have some kids, for example, who need less  
10 support in reading and more support in math.

11 And, by the way, this cuts across  
12 settings again.

13 You may have a student who needs more  
14 support in terms of a particular behavior and  
15 less in another, in which case you're going to  
16 have some things that are programmatic about a  
17 special school and that are not necessarily in  
18 place in general ed that can meet those needs  
19 and then beyond that.

20 And I think the place to look for  
21 a lot of this -- again, I know this is the  
22 applied research part -- is on that research on  
23 behavior support in special schools, where  
24 they'll talk about how a lot of times these  
25 special schools tier one is not the same as --

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1 so tiers I hope everybody's familiar with. We  
2 didn't go over that term.

3 So, again -- I hope I answered the  
4 question. If you need to ask it again, I can --  
5 I can, but that's what I mean by I'm trying to  
6 clarify exactly what we mean about can the  
7 program meet individual needs. Any program has  
8 to meet the I -- the needs as determined on the  
9 IEP.

10 Q. No, I think you did answer my  
11 question. And I'm going to let us take a break  
12 here in just a second, but I just have a couple  
13 of quick follow ups.

14 So, Dr. Wiley, would you agree that  
15 sometimes a setting can be so deficient that you  
16 don't need to do an analysis of a student's  
17 individual characteristics to determine it to be  
18 inappropriate?

19 MS. JOHNSON: Object to form.

20 A. I mean, I think for me to just say  
21 categorically this is not an appropriate program  
22 it would be -- have to be.

23 I mean, the zero that you talked about  
24 does nothing that I would consider to be the  
25 best available evidence for supports for kids

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1 with EBD under those circumstances.

2 And, again, I would apply that to any  
3 setting. General education, if it's doing  
4 zero -- and I think that's one of the challenges  
5 of inclusion, is that that happens quite often.

6 And it's not just because teachers  
7 aren't trained or that they're not motivated to  
8 help these kids. In fact, the opposite.  
9 Motivation is almost always there with teachers.  
10 Teachers are generally really good people.

11 But it can be very difficult to  
12 implement the kinds of individualized supports  
13 that students with EB need. Some yes. Some no.  
14 That's why we have, you know, the continuum of  
15 alternative placements.

16 Is that okay? Did I get that one? I  
17 want to make sure.

18 THE WITNESS: Am I slowing down?

19 COURT REPORTER: No.

20 THE WITNESS: Poor Sarah. She's  
21 never going to want to work with me again.

22 MR. GILLESPIE: I'm going to give  
23 Sarah a break here in just a second.

24 THE WITNESS: Okay.

25 MR. GILLESPIE: Dr. Wiley, when you

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1 say -- actually, you know what, let me, --  
2 let me -- let's pause here. Let's take a  
3 quick break, if that works for you.

4 THE WITNESS: That works for me.  
5 Thank you.

6 THE VIDEOGRAPHER: All right.  
7 Standby.

8 Off the record, 10:13.

9 - - - - -

10 (A recess was taken.)

11 - - - - -

12 (A discussion was held off the record.)

13 - - - - -

14 THE VIDEOGRAPHER: Well, let's  
15 just --

16 THE WITNESS: Oh. Go ahead.

17 THE VIDEOGRAPHER: -- get on the  
18 record. 10:27.

19 Go ahead.

20 THE WITNESS: You had asked if I  
21 had written any other reports, and I  
22 actually have written a report for the  
23 advocate -- Georgia advocate group. I'm  
24 sorry. I'm not going to get the names  
25 right. But there's another case.

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1 BY MR. GILLESPIE:

2 Q. And you provided that report on behalf  
3 of the state of Georgia?

4 A. Yes.

5 Q. And is that report substantially  
6 similar to your report in this case?

7 A. It has --

8 MS. JOHNSON: Object to form.

9 A. -- similarities and -- oh.

10 MS. JOHNSON: You're fine.

11 Go ahead.

12 A. It has similarities and some  
13 differences.

14 Q. Okay. Is it -- are your conclusions  
15 the same in both cases?

16 MS. JOHNSON: Object to form.

17 A. Yes.

18 Q. Thank you for the clarification.

19 A. Uh-huh.

20 THE WITNESS: Oh, am I on camera or  
21 not? Can you see me?

22 MS. JOHNSON: You are.

23 THE WITNESS: Okay. It's weird  
24 that I can't see myself. It's just  
25 throwing me off. I'm good.

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1 Q. Dr. Wiley, in our last conversation  
2 you used a phrase I want to ask you about.

3 You referenced the best available  
4 evidence for supports for kids with EBD.

5 And I just wanted to ask you first, I  
6 guess, what do you consider to be the best --  
7 the practices that represent the best available  
8 evidence for supports for kids with EBD?

9 A. So that -- I mean, that's a big  
10 question. I think a lot of them get touched on  
11 in both the expert reports and in my report.

12 They're ones that I refer to as  
13 promising practices. And in my report I do  
14 describe best available evidence, which is sort  
15 of acknowledging that research on kids with EBD  
16 has important limitations to consider.

17 However, when you say okay, you know,  
18 what are the most effective practices, I think  
19 it would includes things like positive behavior  
20 support, which would be school-wide positive  
21 behavior support, whether you're talking about  
22 general education or a special school. It would  
23 be class-wide.

24 And, again, within these things there  
25 are a lot of practices. So you have to tell me



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1 how much you want me to break it down.

2 But then individualized behavior  
3 support or intensive behavior support, which can  
4 include things like a function -- FBA based --  
5 functional-based interventions.

6 There is -- promising practices  
7 include things like social skills instruction,  
8 intensive academic instruction. So, I mean,  
9 there are a number of them. Yes.

10 Q. Sure. And so -- we're going to talk a  
11 bit more about your conclusions around the  
12 research later on, but, --

13 A. Okay.

14 Q. -- I guess, just generally speaking,  
15 you agree that educators are -- should enact  
16 practices even if the research behind them is  
17 imperfect, correct?

18 MS. JOHNSON: Object to form.

19 Q. Or maybe -- let me rephrase that.

20 A. Okay.

21 Q. That educators are sometimes required  
22 to enact practices even if the research behind  
23 them isn't perfect.

24 MS. JOHNSON: Object to form.

25 A. Do you mean required by law?

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1 Q. No. I mean to effectively serve the  
2 students. Their students.

3 MS. JOHNSON: Object to form.

4 A. And because you're talking about  
5 imperfect evidence, unfortunately that's a  
6 continuum as well.

7 There are some, and an example that I  
8 would give, and I talked about in my report,  
9 would be like universal design for learning,  
10 which is widely known.

11 In terms of imperfection, that one, I  
12 would say, has very little evidence to support  
13 it. And so what I'm saying is that if you're  
14 saying what's going to produce positive outcomes  
15 for the kids, then there are some that are so  
16 imperfect that I would say this is not likely to  
17 work. And then some that you would say yeah.

18 And then the other important thing is  
19 there are degrees of intensity of  
20 implementation. So a lot of the things that we  
21 know in special ed are based on applied behavior  
22 analysis -- I'm sorry. I'm going fast, and I  
23 meant to slow down. Based on behavior  
24 principles like positive reinforcement.

25 I think Dr. Putnam, for example,

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1 mentions praise. And that is a recommended  
2 practice that you would say hey, it's good for  
3 you to acknowledge kids for appropriate  
4 behavior.

5 And so I would say yes, these are  
6 practices that, if you can implement them, are  
7 ones that could serve many kids with EBD well.

8 Q. And that's a great clarification.

9 So, Doctor, maybe to -- tell me if I'm  
10 paraphrasing you correctly, but is it correct  
11 that educators should follow the practices  
12 reflected in the best available evidence to them  
13 even if the research is itself imperfect?

14 MS. JOHNSON: Object to form.

15 A. Yes. In the absence of very strong  
16 evidence. Then we have to pay attention to  
17 what's best.

18 And you saw, you know, like, the What  
19 Works Clearinghouse is very much structured that  
20 way. It has tiers of evident support.

21 And we would say yeah, it's a  
22 promising practice, we would love for it to  
23 have, you know, better support. But that should  
24 probably guide what we do because it's the best  
25 available evidence. Understanding that because

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1 there are limitations to the evidence it may or  
2 may not have the outcomes that we're hoping for.  
3 It's complex stuff. Right.

4 It's not like doing, you know,  
5 something -- and I think initially -- I don't  
6 use this in my report, but when you talk about  
7 providing supports for people with other  
8 disabilities, sometimes they're very concrete  
9 and straightforward. Right.

10 Like, I use the example -- I may not  
11 say this in my report -- like a wheelchair ramp.  
12 We could say well, you know how to put that in  
13 place. And for many people who use wheelchairs.

14 All I wanted to point out in my report  
15 and what I want to make sure is clear is that we  
16 do want to follow the best available evidence  
17 with these understandings that there are  
18 limitations that we need to consider.

19 Q. I appreciate that. Thank you.

20 I'm going to switch gears a little  
21 bit, Dr. Wiley.

22 A. Sure.

23 Q. I'm going to start talking about this  
24 case in particular.

25 A. Okay.

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1 Q. When were you first contacted about  
2 providing expert opinion testimony in this  
3 matter?

4 A. It was this past summer. I don't know  
5 that I have the date. But ...

6 THE WITNESS: Was it June? I  
7 think.

8 MS. JOHNSON: I can't help you.

9 Q. It's all you, Doctor.

10 A. I learned that.

11 Q. That's fine. I won't hold you to the  
12 specific date.

13 A. It was around June. I can find the  
14 exact date of the email --

15 Q. No.

16 A. -- at some point.

17 Q. That's great.

18 And what is your understanding of --  
19 so let me caveat this. I don't want to hear  
20 about any conversations you've had with any  
21 attorneys for the state.

22 A. Okay.

23 Q. But what is your understanding of how  
24 you were identified as a potential expert?

25 A. My understanding is that they -- you

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1 know, I don't know that I know the exact  
2 process, but I think that there were some  
3 experts that they had had communication with and  
4 sometimes they got recommendations from other  
5 experts.

6 We didn't go very far into that, but I  
7 think that there was probably some looking at my  
8 curriculum vitae and, you know, my position  
9 and -- like, on our faculty websites we have  
10 things like here are my areas of focus and  
11 interest.

12 I think mostly what we talked about is  
13 that they had identified, but I don't think I  
14 asked them to unpack specifically the criteria  
15 that they used. I think there was some mention  
16 of other experts in the field that they had  
17 spoken to.

18 Q. And what were you told that you would  
19 be doing in this case?

20 A. I was told that I would be writing a  
21 rebuttal report of the experts of the Department  
22 of Justice. A timeline was given about when  
23 those reports were expected.

24 I had some personal stuff happen, and  
25 so that --

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1 Q. Understood.

2 A. -- timeline changed, but essentially  
3 they said within this timeline here's the  
4 report, here are the other materials. We want  
5 you to review, and then offer your expert  
6 opinion, rebuttal opinion.

7 Q. Were you told to focus on any  
8 particular aspect of the reports or just a  
9 rebuttal to the reports generally?

10 MS. JOHNSON: Object to form.

11 A. I -- my understanding was that I  
12 really was mostly going to be focused on what  
13 was said in the expert reports and rebutting the  
14 claims and findings of the rebuttal report.

15 Q. Okay.

16 A. Reports. Two. Yeah.

17 Q. Were you provided any information  
18 about the GNETS program?

19 A. I was provided access to materials.  
20 And in some of those -- some of the information  
21 I got about it was from the expert reports and  
22 also from some of the other DOJ materials, but I  
23 was also able to go to, like, the Georgia  
24 Department of Ed websites, read the operating  
25 manual, that kind of thing.

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1 Q. Sure.

2 A. So I was, you know, directed to what  
3 the focus of the case was. And some of it,  
4 those materials, were available to me, and some  
5 I went and sort of located.

6 I don't think I located anything  
7 unique. I think the things that I looked at  
8 were in the materials that were made available  
9 to me.

10 Q. Dr. Wiley, you're being compensated  
11 for your work in this case, correct?

12 A. That is correct.

13 Q. And do you know how much you've been  
14 compensated for your work in this case to dated?

15 A. I'm being compensated \$200 per hour.

16 Q. And do you know total how much you've  
17 been compensated for your work today?

18 A. Well, I've submitted invoices for my  
19 work since June. I don't know what the total  
20 is. And all of that hasn't been processed yet.  
21 So I haven't actually gotten any money.

22 Q. Do you have an estimate?

23 A. I think that for the number of hours  
24 that I've worked on this case, it's somewhere  
25 around 20,000.



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1 Q. Okay. And is that directly to you, or  
2 is it through the university?

3 A. It's to me.

4 Q. Okay.

5 A. I've been hired independent of the  
6 university.

7 Q. Did you consult with anyone, again  
8 other than counsel for the state of Georgia,  
9 about your work in this case?

10 MS. JOHNSON: Object to form.

11 A. This case is somewhat well known in  
12 special ed, when it first came up that a case  
13 was being brought under the ADA. So I've spoken  
14 to a few people informally.

15 When you say "consult," I don't think  
16 that that's the case. I was told that I could,  
17 you know, get people to help collect data and do  
18 all kinds of other things, that was an option,  
19 but I didn't. I did these things on my own.

20 Q. And you said it's well known in your  
21 field, this case.

22 What did you know about this case  
23 before you started?

24 A. Well, -- so I belong to a listserv  
25 called SPEDPro, and this is where people

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1 share -- well, they share job openings. There's  
2 some practical -- it's like any listserv.

3 But then sometimes people will --  
4 "Hey, here's an interesting, you know, news  
5 story." And I remember that happening seven  
6 years ago, or whenever the case first came, and  
7 people were like "Well, this is interesting."  
8 So, you know, how do you reconcile ADA with  
9 IDEA.

10 I know that there was a publication by  
11 a couple of folks that I know, Robin Inez  
12 [phonetic] -- and I think it's cited in  
13 Dr. McCart's report -- and then Thomas Catantias  
14 [phonetic], where they wrote about the GNETS  
15 case. So because I read the journals, I had  
16 read a little bit about that there.

17 I think a lot of my scholarship kind  
18 of touches on things that are important to  
19 consider in this case. So I wasn't putting it  
20 in the specific context of this case, but these  
21 are things that are not unique to Georgia.  
22 We're always talking about how do you  
23 appropriately serve kids with EBD and what does  
24 the continuum of alternative placements have to  
25 do it.

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1 Q. And you -- I think you answered this  
2 question, but I just want to be sure.

3 Did you have any graduate assistants  
4 or anyone else assist you with putting together  
5 your report?

6 A. I did not have graduate assistants  
7 help with this report.

8 Q. Or anyone else?

9 A. No.

10 Q. Okay. Did you discuss your work on  
11 this case with anyone other than counsel for the  
12 state?

13 A. Discuss this case? After --

14 Q. Your work on this case.

15 A. Yeah. Again, some conversational  
16 stuff. Not in great depth.

17 Once the report was done, it was my  
18 understanding that it was okay for me to talk  
19 about my report, and I did talk to some people  
20 about that. I just said, you know, here's how I  
21 approached it. But it was very conversational.  
22 These are people that I typically am doing some  
23 research with in various things.

24 Q. Colleagues --

25 A. (Unintelligible) my circles.

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1 Q. Colleagues in the field?

2 A. Colleagues in the field. That's  
3 correct.

4 Q. Is it your understanding that you will  
5 be performing any additional work for the state  
6 of Georgia?

7 A. On this case?

8 Q. Yes.

9 A. I -- my understanding is that if this  
10 were to go to trial, I might testify in court.  
11 I think that's basically my understanding of  
12 after the deposition.

13 Q. And outside of this case do you  
14 anticipate having any other work for the state  
15 of Georgia?

16 A. With the other case being brought by  
17 the advocates, it's pretty much the same thing.  
18 I'll be doing a deposition there. Yeah.

19 Q. But there's not something else you're  
20 doing for the state of Georgia that we haven't  
21 touched on?

22 A. No.

23 Q. Okay.

24 A. No.

25 MR. GILLESPIE: All right. Can we

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1 mark this one as Exhibit 979?

2 - - - - -

3 (Deposition Exhibit 979, Errata to  
4 Rebuttal Expert Report of Andrew Wiley,  
5 Ph.D., was marked for identification  
6 purposes.)

7 - - - - -

8 Q. All right. Dr. Wiley, I -- or Sarah  
9 has handed you what has now been marked as  
10 Exhibit 979.

11 Do you recognize this?

12 A. Yes.

13 Q. Is this a copy of an errata to your  
14 report identifying your considered materials?

15 A. Yes.

16 Q. And is this a comprehensive list of  
17 everything you reviewed and considered in  
18 forming your opinions in your report?

19 MS. JOHNSON: Object to form.

20 MR. GILLESPIE: What's the  
21 objection?

22 MS. JOHNSON: The report speaks for  
23 itself and there's other -- the report  
24 includes other items than on this list.

25 Q. You can answer the question, Doctor.

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1 A. Yes. I think what's here in the  
2 errata is accurate.

3 Q. And the inverse of that question. Did  
4 you review or consider anything in forming your  
5 opinions for this matter that's not on this  
6 list?

7 A. No.

8 Q. Who put this list together?

9 A. I did. And I got some help from  
10 Melanie with errata. We had to correct some  
11 references and we had to update some of these  
12 things. I'm a first timer, so I think I had  
13 forgotten a couple of things that really  
14 belonged on this list.

15 Q. And how did you -- how did you keep  
16 track of what you reviewed or considered in  
17 putting together your report?

18 A. Keep track of?

19 Q. Do you have like a file of your things  
20 for -- as part of your review in GNETS?

21 A. I have a folder, yes, with materials  
22 for the case. And I collected some of the  
23 literature that I cited and PDFs. So yeah. If  
24 that's what you mean, yeah.

25 Q. Absolutely.

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1                   So how did you determine what it is  
2                   you reviewed as part of your evaluation?

3           A.           I determined it by staying very close  
4           to what the experts were stating about the case  
5           and saying using these materials, what is my  
6           evaluation of their findings and their claims  
7           and conclusions. So everything was guided by  
8           rebutting those two expert reports very  
9           specifically. I understood that to be my job.

10          Q.           And when you say staying very close to  
11          what the experts were saying in their reports,  
12          what do you mean by that?

13          A.           What I mean is that when they made a  
14          claim or made a conclusion, I evaluated the  
15          conclusion. And then I used what I needed from  
16          these things to rebut those conclusions, as I  
17          did --

18          Q.           Okay.

19          A.           -- in my report.

20          Q.           Thank you. That's helpful.

21                   Did you ask for any documents as part  
22          of your evaluation?

23          A.           I asked -- I think that a lot of the  
24          documents were sort of given to me upfront in  
25          zip files.

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1 I think there were a couple things --  
2 the one that I did have trouble with was an  
3 upcoming training on functional behavior  
4 assessment. I didn't end up referring to it, I  
5 don't think, but it had gotten mentioned in one  
6 of my conversations with one or more of the DOE,  
7 Georgia DOE folks, and I was curious to see what  
8 that training was going to be. I think that  
9 training is ongoing this year.

10 Q. Okay. So there were the materials  
11 that were provided to you upfront in the zip  
12 files you referenced.

13 You also mentioned you looked at a  
14 couple of things up online, just on the Georgia  
15 DOE website, correct?

16 A. Correct. GNETS and the PBIS website,  
17 yeah.

18 Q. Okay. Was there anything outside of  
19 those two categories that you -- and the  
20 training you just referenced that you asked to  
21 see?

22 A. I do not think so. Hold on.

23 I want to make sure. I don't think  
24 so. I think that's all of them. If I remember  
25 something later, I'll bring it up.



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1 Q. Please.

2 Can you tell me more about this PBIS  
3 training that you said that's ongoing? What is  
4 that about?

5 A. I believe it was when I was talking to  
6 Wina Low. And it was a training focused on  
7 functional behavior assessment. And I think it  
8 was being provided by faculty from one or two  
9 Georgia universities. And I think it hadn't  
10 happened yet, but I was just interested in, you  
11 know, what that actually was.

12 So I saw materials that I think showed  
13 maybe an outline of the topics that they would  
14 cover in a general schedule for when those  
15 trainings would be offered.

16 Q. And was that being -- who was  
17 providing that training?

18 A. I think it was being organized and  
19 maybe sponsored through the Department of  
20 Education. I'm not sure of that, but -- and,  
21 again, I can't remember the exact faculty  
22 members' names.

23 I know that Georgia works with  
24 Dr. George at USF. I don't think she was  
25 involved in this, if I'm remembering correctly.

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1 I obviously didn't make heavy reference to this  
2 specific training in my report, so I'm trying to  
3 remember.

4 Q. Maybe a better question is what's the  
5 connection to GNETS? Was it meant to be a  
6 training for teachers of the GNETS program, or  
7 what's the connection to GNETS? Why did you  
8 want to see it?

9 A. So what I learned in my conversations  
10 is that these trainings are offered to teachers  
11 in general ed, special ed, GNETS, everywhere.

12 If I'm recalling correctly, they  
13 receive the same invitations that other  
14 schools -- so I think they're invited to attend  
15 this training.

16 Q. Thank you. I appreciate that.

17 You also reviewed the 2014 GNETS  
18 operating manual; is that right?

19 A. Yes.

20 Q. And why was that something that you  
21 wanted to look at?

22 A. The specific thing that I was looking  
23 at is -- I think there was something in  
24 Dr. McCart's report that said that the way  
25 that -- and I don't know if she was being

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1 general or speaking to Georgia, but she was  
2 saying that the way that these students were  
3 being referred to GNETS is they were being  
4 labeled and placed.

5 So the idea was, you know, we pick the  
6 label and then we have a program, which is  
7 against the law, you know, procedurally and  
8 substantively.

9 So the one thing that I focused on in  
10 particular in that was how they described how  
11 students were referred to GNETS. And I wanted  
12 to see if their materials -- if it was  
13 consistent with the way I understand the correct  
14 way that students were referred.

15 It was not label based. They pointed  
16 out that the students they serve tend to have  
17 the characteristics of kids with emotional,  
18 behavior disorders, but they also serve kids  
19 with autism spectrum disorders and OHI, which  
20 would probably mostly be ADHD.

21 So I was looking at it to see if what  
22 was conveyed in that manual was what Dr. McCart  
23 was saying was occurring.

24 Q. Thank you. That's helpful.

25 You also reviewed to Georgia DOE PBIS

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1 website, correct?

2 A. Yes.

3 Q. And why was it you looked at that?

4 A. I was looking for information on, you  
5 know, their implementation. They actually have  
6 some things that I think are common across  
7 states, but -- also happens in Ohio, where they  
8 recognize different schools for different levels  
9 of implementation.

10 So I was trying to get the most up to  
11 date information on implementation of PBIS,  
12 which -- I think you see in those expert reports  
13 and you see some in mine, you know,  
14 implementation tends to happen in stages,  
15 because PBIS is very complex and there's sort of  
16 initial and then emerging, and -- I'm not going  
17 to remember the exact.

18 So one of the things that I was  
19 looking at was, you know, what was more up to  
20 date in terms of what percentage of schools were  
21 implementing PBIS. I can't remember if I  
22 actually put that exact number.

23 Part of my point was compared to  
24 national data on a lot of states, I would argue  
25 that Georgia's a bit ahead of the curve in terms

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1 of implementing PBIS. And I just wanted to make  
2 sure that I was, you know, reflecting what  
3 Georgia was presenting as their data.

4 Q. I understand.

5 A. There may have been other things, and  
6 I think of them, I'll say, but I think that was  
7 one of the big reasons why I looked at that PBIS  
8 website.

9 Q. Understood. Thank you.

10 It also says here you reviewed the  
11 state of Georgia's memorandum of law in support  
12 of its motion to dismiss; is that correct?

13 A. Yes.

14 Q. And why did you look at that?

15 A. Well, I wanted to understand sort of  
16 the legal cases that were being made. I will  
17 admit that when I'm reviewing that stuff, I get  
18 lost a little bit in the legalese part.

19 But as I was looking at the expert  
20 reports, I was looking at things that were also  
21 stated in those DOJ materials.

22 And also -- I mean, so the only thing  
23 that I think I really touched on was -- from my  
24 level of expertise, IDEA and that in the law.  
25 And so I read those things to have an

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1 understanding of, to the extent that I could,  
2 the legal arguments.

3 Those things didn't become a major  
4 part of my report because my report was really  
5 focused on Dr. Putnam and Dr. McCart.

6 Q. Understood.

7 And I'm assuming it's the same thing  
8 with your review of the Court's order.

9 A. Yes.

10 Q. Okay. When you refer to the state of  
11 Georgia -- sorry. I want to go back just a  
12 second to the PBIS.

13 When you refer to the state of Georgia  
14 being ahead of curve in PBIS implementation, can  
15 you explain to me what you mean by that?

16 A. Sure. And so, again, you can access  
17 state data from some states and not from others.  
18 Georgia is saying here's what we've implemented.

19 And so the other complexity that I  
20 think Dr. Putnam touched on is not only do you  
21 have stages of implementation but you have these  
22 tiers. Right.

23 Tier one is that school-wide  
24 expectations and all that stuff.

25 Tier two would be for kids that are on

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1 the fence, having some difficulty.

2 And tier three.

3 So when I say "ahead of the curve,"  
4 I'm comparing to the national data that is in  
5 the report -- or the paper by Dr. Sugai and  
6 Dr. Horner, I believe, where the actual PBIS is  
7 one of the big clearinghouses for saying how's  
8 implementation going.

9 And so in that paper, the report shows  
10 that about a quarter of schools nationwide --  
11 and they don't break out state data, but they do  
12 say some states it's fewer than 50 schools and  
13 some ...

14 And so when I say that, I say that  
15 it's ahead of the curve in terms of that  
16 25 percent.

17 The next part of that, and it is  
18 important, is that in that paper by Sugai and  
19 Horner, they then talk about levels of -- or  
20 fidelity of implementation. Right. Of those  
21 one out of four schools, how many have -- and I  
22 don't remember the exact numbers, but it's a  
23 smaller fraction that will say not only are we  
24 doing it, we're doing it well.

25 And then as you get to those more

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1 specialized tiers, you know, more complex tiers,  
2 tier two, tier three, that number shrinks quite  
3 a bit.

4 But I think that the data that I  
5 looked at in PBIS was mostly focused probably  
6 just on tier one. Have they, you know, started  
7 to implement. And in that sense it was above  
8 25 percent.

9 I -- yeah. Yep. That's it.

10 Q. Okay. Thank you.

11 You also reviewed the depositions of  
12 Jason Byars, Wina Low, Brooke Cole, and  
13 Dr. Cassandra Holifield, correct?

14 A. I did.

15 Q. Were there any others that you  
16 reviewed?

17 A. Depositions?

18 Q. Yes.

19 A. Well, since my report I have looked at  
20 the depositions of Dr. Putnam and Dr. McCart,  
21 although neither in great detail. I've kind  
22 of --

23 Q. Okay.

24 A. -- skimmed both of those, but that was  
25 after I wrote the report.



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1                   Yeah, I looked at those because I  
2   think they were referenced in some of the expert  
3   reports and I think they spoke to, again, some  
4   of the things about the processes between  
5   referral and, you know, what was happening in  
6   GNETS and what was happening in zone schools.

7                   I don't think I heavily cited any of  
8   those depositions. I didn't find anything that  
9   I thought really was necessary for the rebuttal  
10   opinion that I was writing.

11       Q.       Why -- how are those four individuals  
12   identified?

13       A.       I know that Wina Low, Brooke Cole, and  
14   Cassandra Holifield had -- at least one or two  
15   of them had previous connections to GNETS and  
16   experience in leadership in GNETS and also  
17   current leadership in PBIS.

18                I'm trying to remember, and I don't  
19   know that I can. Again I'll have to think about  
20   it, why it was that Jason was one that I  
21   asked -- or one that I looked at. I'll have to  
22   think about that.

23                But I think that those were the things  
24   that I was trying to get some more context  
25   about; referral and services that are provided

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1 in zone schools.

2 Probably some things about training as  
3 well. I think talking to Wina Low I just wanted  
4 to, you know, find out some things that she  
5 would say about that.

6 Q. Maybe a better question would be who  
7 identified these four people as -- or who  
8 identified these four depositions as items for  
9 you to consider?

10 A. I think that I identified those in  
11 talking with the lawyers and saying can you help  
12 me think about who would help me get some more  
13 context for A, B, and C. And then it was sort  
14 of a back and forth.

15 I mean, I do think that a tricky part  
16 for me, and I don't know if this is normal, is  
17 that I had a pretty compressed time frame to  
18 write my report.

19 So for some of the things, because  
20 it's a lot of materials, I would say hey, I'm  
21 interested in this. What are things that I  
22 might look at. And it was a conversation. It  
23 was really my decision, but they would say, you  
24 know, this person may have talked about this and  
25 this and this. So if that makes sense.

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1 Q. And so you identified topics, and then  
2 you were helped to find people who would speak  
3 to those topics?

4 A. That's right --

5 Q. Okay.

6 A. -- basically.

7 Q. Thank you.

8 And who is Jason Byars?

9 A. See, that's the one I'm not going to  
10 remember; Jason's background. I think I could  
11 tell you about Wina and Brooke and Cassandra --  
12 Dr. Holifield.

13 Q. Do you know if --

14 A. I would have to look. I don't have it  
15 in my brain.

16 Q. Do you know if Mr. Byars has ever  
17 worked in a GNETS program?

18 A. I do not know --

19 Q. Okay.

20 A. -- but based on my -- I don't know.

21 Q. And you also spoke -- you also spoke  
22 with several individuals as part of your  
23 evaluation, correct?

24 A. I did.

25 Q. And with whom did you speak?

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1 A. I spoke with Wina Low, Brooke Cole,  
2 Cassandra Holifield. And I feel like there was  
3 one other person and I'm not going to remember  
4 her name.

5 Q. Would that be Jeannie Morris?

6 A. I think so. I think so. Yes.  
7 Because I do refer to those conversations in my  
8 report. Thank you.

9 Q. Was there anyone else that you spoke  
10 to?

11 A. From Georgia DOE --

12 Q. Well, let's say --

13 A. No. No. No. Go ahead. Ask your  
14 question.

15 Q. Yeah.

16 Did you speak to anyone else as part  
17 your evaluation in this case?

18 A. No.

19 Q. Okay. How were those four individuals  
20 identified as people with whom you would speak  
21 as part of your evaluation?

22 A. It is similar to the depositions. I  
23 had topics that I wanted to get some more  
24 context and talk to some people who actually had  
25 worked in these programs.

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1                   And so based on that -- I think,  
2                   again, it was -- it might have been the same  
3                   conversation, where I was saying these would be  
4                   people in our compressed time frame that  
5                   at least if I could have a phone conversation.  
6                   And so I had those topics in my mind and I  
7                   talked to them about those topics.

8           Q.           And so other than those four  
9           individuals, you didn't discuss GNETS with  
10           anyone else, correct?

11          A.           I do not think so, no.

12          Q.           Okay. Or at least not that you  
13           considered in forming your report, correct?

14          A.           That's correct. Yes.

15          Q.           Did you -- no. We covered that one.  
16                        If you had more time, was there other  
17           material that you would have liked to have  
18           considered in putting together your opinions in  
19           this case?

20          A.           I think that when I read the expert  
21           reports and understood it to be my task, to  
22           evaluate the conclusions and claims, that I  
23           don't think that in order to do that I needed to  
24           review much more than I did or any more. I  
25           think that I was able to rebut the claims and

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1 the findings with the materials that I reviewed.

2 Q. At any point did you travel to the  
3 state of Georgia as part of your work in this  
4 case?

5 A. I did not.

6 Q. So you didn't conduct any observations  
7 as part of your evaluation, correct?

8 A. I did not, no.

9 Q. So did you consider anything in  
10 drafting your report that we have not discussed  
11 and that's not listed in the errata?

12 A. No. I think -- I think that's  
13 accurate and comprehensive.

14 Q. You didn't review any other documents?

15 A. No.

16 Q. You didn't review any other analyses?

17 A. What do you mean by "analyses"?

18 Q. Like data analyses, for example.

19 A. No. No.

20 Q. Were you told anything that informed  
21 your opinions that may not be reflected  
22 separately in a document? And by that I mean,  
23 for example, something you were told over the  
24 phone.

25 A. No.

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1 And I just want to clarify with -- you  
2 know, the data analyses. When I hear that in my  
3 world and I'm thinking about it, I might be  
4 talking about things like state provided data.

5 If you meant to include research as  
6 data analyses, I just want to say that in order  
7 to provide the research part of my rebuttal, my  
8 strategy was to look mostly at research  
9 syntheses.

10 So going study by study is a pretty  
11 inefficient way to characterize the research.  
12 So that was something that was a decision where  
13 I could have gone study by study, but that  
14 becomes -- you know.

15 So it's a very normal practice in  
16 special ed research and other social sciences,  
17 education, that people synthesize based on  
18 certain criteria. Here's what we know about X,  
19 Y, or Z.

20 So my point being did I include  
21 literally everything that's ever been published  
22 about all of these topics? No. But my strategy  
23 was -- and not only syntheses, but also ones  
24 that are most directly relevant to kids with  
25 behavior-related disabilities and/or providing

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1 services in general education or providing  
2 services in separate schools.

3 Q. I appreciate that clarification. But,  
4 no, I was focused on data related to GNETS --

5 A. Got it.

6 Q. -- or the state of Georgia.

7 And the answer [sic] is, did you  
8 review any data --

9 A. I didn't.

10 Q. -- related to the state of Georgia?

11 A. No. I don't think things that made it  
12 into my report -- so I just want to make sure  
13 I'm answering your question accurately.

14 Q. Please.

15 A. For example, when I was looking at  
16 GNETS, there might have been some information  
17 about -- and this may not have been GNETS, but,  
18 like, changes in enrollment over time. That  
19 might have been referred to in maybe the report,  
20 so I may be confusing myself.

21 Where at the time that I think this  
22 case was first brought, GNETS enrollment was X,  
23 like 5,000, 6,000, and now it's 2,000. I'm just  
24 telling you that because it didn't become a part  
25 of my report but I may have seen those things



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1 either in the expert reports or in some of the  
2 materials that I reviewed.

3 Q. Understood. Thank you.

4 THE WITNESS: That was too fast.

5 I'm sorry.

6 Q. All right. So your errata references  
7 you spoke with employees of the Georgia  
8 Department of Education. That would be Ms. Wina  
9 Low, correct?

10 A. Correct.

11 Q. Was there anyone else from the Georgia  
12 Department of Education?

13 A. Brooke Cole, Dr. Holifield, and  
14 Jeannie Morris.

15 Q. Okay. Thank you.  
16 What is -- let's start with Ms. Low.  
17 What's Ms. Low's title? Do you recall?

18 A. I believe she's the director of  
19 special education. You're going to quiz me on  
20 these, and I may not get them all right. So ...

21 Or she may be a super -- I don't even  
22 know if instructor of special education -- she  
23 may be a state superintendent. I -- I  
24 apologize.

25 Again, if I had a moment, I could look

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1 through and refresh my understanding.

2 Q. No. You're -- I'm just trying to get  
3 an understanding of your recollection, with the  
4 understanding that sometimes recollection's  
5 imperfect.

6 How did you communicate with Ms. Low?

7 A. By -- by phone.

8 Q. How many times?

9 A. Wait. It may have been -- and I'm  
10 going to get this mixed up. I think there may  
11 have been a Teams for a couple and it may be  
12 phone.

13 Q. Okay.

14 A. But it was either virtual or  
15 phone call.

16 Q. How many times did you speak with  
17 Ms. Low?

18 A. One time.

19 Q. And who attended that -- I'm sorry.  
20 Did you say this one was a phone call  
21 or a Teams chat?

22 A. See, I'm not going to be able to  
23 remember which is which.

24 Q. This discussion -- who attended this  
25 discussion?

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1 A. I think Melanie was there for that  
2 discussion. And she can't help me, but I think  
3 that's it.

4 Q. Okay. And who led the discussion?

5 A. I did.

6 Q. Okay. And was there an agenda or an  
7 outline that you went through?

8 A. There were topics that I had in mind  
9 that I wanted to talk about. And that's pretty  
10 much -- and then I kind of let it go where they  
11 wanted to fill in things that I may not have  
12 known about based on, you know, my prompts or my  
13 conversations.

14 Q. And did you put that together?

15 A. I did.

16 Q. Okay. Did this outline of topics  
17 differ from person to person you spoke with?

18 A. There were definite overlaps. There  
19 were similar topics that I wanted more context  
20 about.

21 And again very generally speaking, it  
22 would have been some of the things related to  
23 services provided in general ed and special ed  
24 or in GNETS. Also things related to training.  
25 And then some questions about the referral

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1 process.

2 Q. Thank you.

3 MR. GILLESPIE: Can we mark this as  
4 980?

5 - - - - -

6 (Deposition Exhibit 980, 8/23/2023  
7 Interview Notes, was marked for  
8 identification purposes.)

9 - - - - -

10 Q. Dr. Wiley, do you recognize this  
11 document?

12 A. Yes.

13 Q. And what is this?

14 A. Some notes from my interview.

15 Q. And was this interview dated August 23  
16 of this year?

17 A. Yes.

18 Q. Okay. And who authored this document?

19 A. I did.

20 Q. And how was this created?

21 A. You know, I wrote down initially some  
22 of the things that I wanted to talk about.  
23 Whether or not that's going to be obvious to a  
24 person, an outsider reading it, probably not.

25 And then as I talked about things, I

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1 would fill things in. Now, there may have been  
2 things that I initially thought I wanted to talk  
3 about, but then it came up in a different part  
4 of the conversation.

5 Your question is -- if you want to say  
6 how is it organized, it's not very. This is my  
7 brain kind of going through things that I wanted  
8 to talk more about.

9 Some of -- the 1, 2, and 3, I think it  
10 was my intention to go kind of in an order, but  
11 that order may have sort of fallen apart.

12 So there are a few topics that I threw  
13 down first, and then had the conversation and  
14 then took some notes.

15 Q. Okay. Thank you.

16 And I'll just throw out there I'm glad  
17 it's not my notes that we're going through  
18 because --

19 A. Right.

20 Q. -- it would be the same story.

21 How long did you speak with Ms. Low?

22 A. My recollection would have been about  
23 an hour and a half.

24 Q. Okay.

25 A. Maybe a little bit more.

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1 Q. And are these the only notes from that  
2 conversation?

3 A. Yes.

4 Q. Okay. For these interviews is it fair  
5 to say that you wrote down the information that  
6 you thought was most relevant to your review?

7 A. Most relevant to the questions that I  
8 had and the topics where I wanted to get some  
9 more context.

10 Q. And I think you answered this, but if  
11 you see on the -- just on the first page even,  
12 but it continues through. You have "second" at  
13 the top, and then "first" further down and -- is  
14 that what you were saying before about having a  
15 rough order that you wanted to discuss things?

16 A. Right.

17 Q. Okay.

18 A. And I don't know that I stuck to that.

19 Q. Were these notes taken  
20 contemporaneously with your discussion with  
21 Ms. Low?

22 A. That is correct.

23 Yes. I'm sorry. I got to do yes and  
24 no. I'm trying to remember all of my tips and  
25 I'm not doing it.

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1 Q. That's fine, too.

2 So many of the questions that I see on  
3 here seem not to have notes for the answers to  
4 them. Is that because they weren't answered or  
5 another reason?

6 A. They may have been answered or not. I  
7 can't tell you for sure if that's why you don't  
8 see additional notes. There were some things  
9 that I think I knew where I wanted to include in  
10 my report and I put things directly into my  
11 report. Probably not contemporaneously, but  
12 immediately after I stopped talking, I went and  
13 said okay.

14 You know, that was where I wanted to  
15 see if I could get more context from people  
16 working in Georgia.

17 Q. And on this first page here there are  
18 some questions and words that are bolded. Is  
19 there any significance to that?

20 A. I tried to remember what my brain was  
21 doing as I thought that that was kind of an  
22 interesting question and one that applies to all  
23 states, but I can't tell you. I'm sort of  
24 speculating about what the method was to my  
25 madness here.

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1 Q. There are a couple of font changes  
2 throughout the document, too.

3 My question is just were there things  
4 taken from other sources or --

5 A. No. That's all accidental.

6 Q. Okay. So in the middle of the first  
7 page you have the number "1," "2" there.

8 1 begins "With SW-PBIS."

9 Do you see that?

10 A. Uh-huh.

11 Q. And these two points, were these notes  
12 from something Ms. Low said?

13 A. No. I think those were things that I  
14 put in as topics because they were what I  
15 understood to be conclusions of the experts and  
16 I wanted to remember that that was my focus.  
17 Right.

18 So when I was asking questions about  
19 specific to Georgia, how does that relate to the  
20 idea that virtually all students -- you know,  
21 you can see what they say. But yeah.

22 Q. Okay. So this is your paraphrase of  
23 what you understood the United States experts'  
24 to be saying?

25 A. It's a shorthand, --



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1 Q. Okay.

2 A. -- yeah. Just to remind myself.

3 Q. Thank you.

4 And SW-PBIS is "school-wide" --

5 A. School-wide -- uh-huh. Yep. Yes.

6 Q. On the second page -- there aren't too  
7 many questions here. Just a couple.

8 Under "second" you have "GNETS  
9 programs," and then "What do parents say about  
10 GNETS? Anecdotal or data."

11 Do you see that?

12 A. Yes.

13 Q. What did you ask here?

14 A. Now, I think that this is one that I  
15 ended up asking Dr. Holifield, because I can't  
16 remember -- it was either that -- I can't  
17 remember what Ms. Low's experience was with  
18 GNETS and whether I thought that she had the  
19 most recent or maybe the most years where she  
20 could answer that question.

21 So I think it was a topic that I  
22 was -- have in my report, right, when I talk  
23 about who makes decisions about placement and,  
24 you know, what their impressions are.

25 So this one I may have put here, but I

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1 may not have asked.

2 Q. Okay.

3 A. But I am interested to hear what  
4 people who have worked in this program actually  
5 say about experience with the parents. And then  
6 if they had data. But that would be kind of  
7 surprising.

8 I don't know many school programs that  
9 have really good reliable data about school  
10 contacts or even feedback. I mean, schools  
11 sometimes do that from parents. Right. They  
12 want to know do they like things.

13 But that's my recollection about --  
14 that was a possible topic, but I may not --

15 Q. Sure.

16 A. I may have decided not to ask Ms. Low  
17 about it.

18 Q. In just the next line you talk about  
19 the strategic plan. Same question. Do you  
20 recall what question you asked there?

21 A. Strategic plan. Oh, okay. So that  
22 comes from -- the strategic plan. That might  
23 have been -- I think I might have sort of  
24 cross-hatched my report and the things I was  
25 focusing on with that strategic plan that is

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1 part of -- it's on the GNETS website, I believe.

2 Q. Okay.

3 A. You all know what I'm referring to.

4 They have a strategic plan. It's like a  
5 self-assessment checklist. And so I think I  
6 looked at that when I was thinking about what I  
7 wanted to talk about.

8 Q. But you don't recall if you -- if  
9 Ms. Low told you anything about this?

10 A. I don't think so.

11 Q. Okay.

12 A. And it could have been because I saw  
13 that and I understood it to be a self-assessment  
14 that they might have actually collected data,  
15 maybe annually, that would speak to that  
16 particular topic.

17 But I think I must have decided in  
18 talking to Ms. Low -- or is it Dr. Low? I feel  
19 bad if I'm not -- that she wasn't the best  
20 person to ask.

21 Q. Okay. A little bit further down under  
22 "third," a couple lines, --

23 A. Okay.

24 Q. -- there's a line that begins  
25 "Social/emotional skills."

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1 Do you see that?

2 A. Yeah. Oh. Social -- yeah,  
3 social/emotional skills.

4 Q. It says "All programs use social  
5 skills; psychologists, school counselors, social  
6 workers, individual therapeutic; to the best of  
7 my knowledge, SEL curriculum, not sure if it was  
8 being implemented; character education."

9 Do you see that?

10 A. Yes.

11 Q. And do you recall what you asked here?

12 A. Do I recall what? I'm sorry.

13 Q. What you asked there.

14 A. I think that I asked about the  
15 implementation of social skills programs.

16 What I can't remember from my notes  
17 right here is if I was asking about GNETS, zone  
18 schools, or both. But I think it was about  
19 GNETS and she was saying -- social skills,  
20 psychologists, school counselors helped with  
21 social skills.

22 So I think she was saying that it was  
23 her experience that social and emotional  
24 programming was provided in GNETS.

25 And then the character education, the

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1 SEL curriculum, what I'm confused about here is  
2 that she may have been talking about in the zone  
3 schools. Like there may be a curriculum that --  
4 some of the zone schools, but I'm not sure.

5 Q. Okay. So this answer may have applied  
6 to some combination of zone schools and GNETS?

7 A. Yeah. And I apologize. It's just the  
8 nature of my notes.

9 Q. Let's see here.

10 Did you have an understanding that all  
11 regional GNETS programs utilize psychologists?

12 A. Is it my current understanding?

13 Q. At the time -- at the time you put  
14 together your report.

15 A. You know, I later saw -- so I don't  
16 even know if I should talk about it, but I saw  
17 that in another -- in the other case an expert  
18 talked about how many psychologists are GNETS.

19 But the answer for this, when I put  
20 together my report, I did not know how many  
21 psychologists served GNETS programs.

22 Q. And what's your understanding now?

23 A. My understanding now is that they may  
24 have psychologists that serve more than one  
25 GNETS program, but I can't off the top of my

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1 head characterize that exact --

2 Q. Sure.

3 A. -- proportion.

4 Q. By the time you put together your  
5 report in this case, was it your understanding  
6 that all regional GNETS programs utilized school  
7 counselors?

8 A. Now, I think from my conversation  
9 there was involvement of school counselors, but  
10 again, I can't tell you exactly how that was  
11 configured.

12 There are times and places where you  
13 could have one counselor and one psychologist  
14 per program, but I also don't think it's  
15 unusual, especially given some shortages  
16 depending on where you are, that psychologists  
17 might serve, for example, more than one program  
18 or a school counselor.

19 Q. Thank you.

20 And with the -- specifically with the  
21 language in here, "to the best of my knowledge,  
22 SEL curriculum, not sure if it was being  
23 implemented," would that have been --

24 A. That was her quote.

25 Q. Thank you.

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1 A. Yeah.

2 Q. Okay.

3 A. And I think she was speaking as a  
4 person who wasn't currently either in the zone  
5 schools or the GNETS. I'm sorry. I can't  
6 figure out which one that applied to.

7 But the character education as I  
8 recall it, and I don't recall it well because it  
9 didn't go into my report, is something that  
10 maybe some Georgia schools were doing. Some  
11 sort of school-wide character education, but I'm  
12 not -- I'm not certain.

13 Q. So I'm just looking at the next line  
14 and just the -- you have there "seclusion and  
15 restraint?"

16 And my question is, what were you told  
17 about the use of seclusion and restraint in the  
18 GNETS program?

19 A. So I focus more as mindset because I  
20 had seen that in the expert reports, I believe.  
21 It also came up in the conversation that this  
22 was the crisis intervention training that most  
23 GNETS programs use.

24 I don't -- I'm not familiar with it.  
25 I am familiar with Mandt and CPI. Those are the

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1 two that I've had the most experience with. But  
2 I think I did ask.

3 But the purpose of a crisis  
4 intervention is to minimize the use of restraint  
5 and minimize the use of seclusion.

6 In my professional experience that was  
7 a big focus of what I did. Because when I  
8 worked at the special school for kids with EBD,  
9 I was a crisis resource teacher and our goal was  
10 to get better and better at deescalating kids  
11 without the use of seclusion and restraint.

12 But I don't think when I talked to  
13 Ms. Low we talked directly about seclusion and  
14 restraint. We just talked about mindset as a  
15 program for crisis intervention.

16 Q. Okay. Thank you.

17 So I'm going to skip down two  
18 paragraphs. It begins "Computer-based  
19 instruction." But I actually want to ask about  
20 the line "kids are almost always behind  
21 reading."

22 Do you see that?

23 A. Yes.

24 Q. What were you told related to that?

25 A. I think that we were -- it was a



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1 question that I had because in the report it  
2 talked about what the perception of the expert  
3 was that there was an overreliance on  
4 computer-based instruction. So I wanted to talk  
5 to somebody about that.

6 And I think that that comment did come  
7 from Ms. Low, and it was that these kids that  
8 they were serving in these programs were almost  
9 always behind in their ability to read. So they  
10 were, you know, grade levels behind, which is  
11 very typical of kids with EBD, and that the  
12 computer-based instruction wasn't the only  
13 instruction.

14 But there are a number of  
15 research-based, computer-based programs -- I  
16 didn't look at exactly what they were using --  
17 that can be used for kids that do have reading  
18 difficulties. Read 180 is one for high school  
19 kids that just jumps to mind.

20 But anyway. Does that make sense?

21 Q. Yes, that does.

22 A. Okay.

23 Q. Thank you.

24 So I think relatedly, going on to the  
25 next line, you wrote "hard to special ed teacher

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1 to become qualified - computer-assisted as  
2 co-teaching."

3 And I was wondering what you were told  
4 related to that.

5 A. My goodness. I -- here's what I  
6 think. And I'm interpreting my own notes. If  
7 it didn't make it into my report, I apologize.

8 But I think that what they were  
9 talking about was there may have been GNETS  
10 programs in high schools, so these would not  
11 have been separate schools, where they were  
12 trying to help kids struggling academically.  
13 And they may not have always had one-to-one  
14 special ed, and so computer-assisted instruction  
15 was used to supplement regular instruction.

16 Highly speculative. I'm not sure what  
17 I meant there. I apologize.

18 Q. No.

19 Dr. Wiley, were you ever told that  
20 computer-assisted learning was used when there  
21 weren't qualified staff available?

22 A. I was not told that.

23 Q. Okay. Would that concern you, if that  
24 was a practice?

25 A. That --

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1 MS. JOHNSON: Object to form.

2 A. Okay. The way that computer-assisted  
3 instruction, which, again, I want to emphasize  
4 people who don't know the research super well  
5 might say "Oh, that's terrible." And you could  
6 characterize it as oh, we just send these kids  
7 to computers.

8 It varies in how the format is and how  
9 much is delivered through the computer and how  
10 much is delivered in other ways.

11 I think in another conversation, it  
12 was with Dr. Holifield, where she said it's a  
13 mischaracterization to say that these kids were  
14 just receiving computer-based instruction.

15 In your hypothetical where you say if  
16 they were just receiving computer-based  
17 instruction, I can't think of one of these  
18 programs where that's the way it's supposed to  
19 be.

20 Q. And again -- so switching from  
21 specifically talking about GNETS to just into a  
22 hypothetical. If a program was using  
23 computer-assisted learning for subjects where  
24 they didn't have qualified teaching staff  
25 available, would that cause you concern as an

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1 expert in this field?

2 MS. JOHNSON: Object to form.

3 A. If that were happening, I mean, the  
4 devil still might be in the details, but  
5 generally I would say that needs to be looked at  
6 more closely to understand exactly what's going  
7 on.

8 Q. The next little line there is "School  
9 districts that would be upset."

10 Do you have a recollection of what  
11 that's referring to?

12 A. I'm embarrassed to say this is what my  
13 brain looks like when you open it up.

14 I don't know the context of that.  
15 Sorry.

16 Q. Let me see if I can truncate this a  
17 little bit.

18 Let's go to the last page here.

19 A. Okay.

20 Q. And there's a font change here at the  
21 very end after "first," and my question is, were  
22 these -- to your recollection, is this still  
23 notes from your conversation with Ms. Low? That  
24 last section there.

25 A. I want to make sure I get this right.

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1 I think there are two things here, and  
2 it could be that the first things I either  
3 paraphrased or copied, possibly from the  
4 strategic plan, but I'm guessing a little bit.

5 And then I think that where it starts  
6 saying "Schools did have behavior specialists,"  
7 that might have been what Ms. Low said to me.

8 Does that make sense?

9 So where it goes from "properly  
10 evaluating --

11 Q. Yeah.

12 A. -- or reevaluating students', "  
13 "applying entrance and exit standards,"  
14 "redirecting the state's" -- I'm sorry.  
15 "Redirecting the state's resources."

16 But then I think when it says "Schools  
17 did have behavior specialist; had to have  
18 functional behavior assessment/behavior  
19 intervention plan for one year," I believe that  
20 that is what I was told by Ms. Low.

21 And, again, I am not 100 percent  
22 certain.

23 Q. Okay.

24 A. And it's probably because I copied and  
25 pasted something with different font, and then I

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1 continued typing my notes beneath that --

2 Q. Sure.

3 A. -- and it just had the same font.

4 MR. GILLESPIE: I think now is a  
5 good time for another break, if that works  
6 for you all.

7 THE WITNESS: Sure.

8 THE VIDEOGRAPHER: Off the record,  
9 11:22.

10 - - - - -

11 (A recess was taken.)

12 - - - - -

13 THE VIDEOGRAPHER: We're back on  
14 the record, 11:35.

15 BY MR. GILLESPIE:

16 Q. Dr. Wiley, just one or two more  
17 questions with regard to your notes from  
18 Ms. Low.

19 A. Okay.

20 Q. Again looking at that section after  
21 "first" where it says "properly evaluating or  
22 reevaluating students' service needs and whether  
23 those needs can be met in general education  
24 classes or schools."

25 Do you remember if Ms. Low told you

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1 anything related to that?

2 A. I don't recall in that conversation  
3 whether Ms. Low said anything about that. The  
4 only thing that I would relate could have been  
5 where she said they had to have a functional  
6 behavior assessment, behavior intervention plan  
7 for one year. So that might have related to --

8 Q. Okay.

9 A. Yeah.

10 Q. No, I didn't mean to interrupt you.  
11 I'm sorry.

12 A. No, that's okay.

13 Q. Okay. You can set that aside if you  
14 would like.

15 A. Okay.

16 Q. I'm done with that one.

17 Are you aware that the Georgia  
18 Department of Education employs a GNETS program  
19 manager?

20 A. Am I aware -- say it one more time.

21 Q. Sure.

22 Are you aware that the Georgia  
23 Department of Education employs a GNETS program  
24 manager?

25 A. That's not a detail that stuck in my

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1 head, but I assume that they must or you  
2 wouldn't bring it up. If I lost track of titles  
3 and things, that might have been it.

4 Q. Do you know who Vickie Cleveland is?

5 A. I know that name is familiar, but no,  
6 I don't know.

7 Q. Do you know who LaKesha Stevenson is?

8 A. No.

9 Q. Sean Owen?

10 A. Again, I might have seen these names  
11 listed --

12 Q. Sure.

13 A. -- as, you know, part of the  
14 depositions maybe, but no.

15 Q. But sitting here today, you don't  
16 recall who these individuals are.

17 And Matt Jones. Is that -- do you  
18 know who that is?

19 A. I don't.

20 Q. Okay. And you said you spoke with --  
21 actually, let me rephrase that.

22 You also said that Dr. Cassandra  
23 Holifield, Brooke Cole, and Jeannie Morris were  
24 all with the Georgia Department of Education as  
25 well?



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1 A. Yes.

2 Q. And what were their roles?

3 A. I think Jeannie Morris was either  
4 student wellness or PBIS. Or they may have  
5 combined those two things recently. So she's  
6 the director of that.

7 Dr. Holifield might have been the  
8 director of special education.

9 I -- I'm not going to remember. I  
10 remember that -- all of these folks when I  
11 talked about people who had some experience with  
12 GNETS. Again, if I'm remembering correctly,  
13 it's all of those people except for maybe Wina  
14 Low. She might even have had some experience.

15 But I don't remember their titles  
16 right offhand. I would have to look at my --

17 Q. And, again --

18 A. -- materials.

19 Q. -- the people you spoke with and the  
20 depositions you reviewed, you didn't identify  
21 those individuals by, for example, title and say  
22 I want to speak to this person, correct?

23 A. No. By topic. And, again, I did get  
24 a little bit of help consulting with the lawyers  
25 about, you know, here are the things that I

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1 would like some additional context, given my  
2 limited time and, you know, being able to speak  
3 to a few people who have some knowledge about  
4 these topics.

5 Q. And --

6 A. And we identified those people  
7 together.

8 Q. And for any of these individuals were  
9 you the one that said I want to talk to this  
10 person specifically?

11 A. I made the decision, yeah, based on  
12 talking about the topics that I was interested  
13 in and then given some more information about  
14 some of these different people. And those are  
15 people that I selected based on the topics.

16 Q. And based on the information that was  
17 given to you about what these people knew or  
18 didn't know?

19 A. Yeah. Yeah.

20 MS. JOHNSON: Object to form.

21 Q. And -- okay. Thank you.

22 So let's start with Dr. Cassandra  
23 Holifield. How did you communicate with her?

24 A. It was -- again I can't figure out  
25 which. Phone call or Teams.

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1 Q. So maybe I'll -- for all four of these  
2 individuals, was it either a phone call or a  
3 Teams call?

4 A. Yes.

5 Q. Okay. And for Dr. Holifield, how long  
6 did you speak with her?

7 A. I didn't note the exact amount of  
8 time, but I think all of those conversations  
9 were between an hour and a half and two hours.

10 Q. Okay. Did who attended these  
11 discussions vary from call to call?

12 A. I think it was always just the  
13 individual, and then Melanie was with me on all  
14 of them. Again, I don't know why I think there  
15 might have been one other person from -- but I  
16 think it was just the three of us, yeah.

17 Q. And did you lead the discussion for  
18 each of these calls?

19 A. I did.

20 Q. Okay. And was it like this? Based on  
21 some notes that you put together --

22 A. Yeah.

23 Q. -- about what you wanted to discuss.

24 A. That's correct, yes.

25 Q. Did anyone else take notes during

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1 these calls?

2 A. I don't think so.

3 Q. Okay.

4 A. I mean, I'm not sure what the people I  
5 was talking to might have done. It didn't  
6 appear they were taking notes. Or if they were  
7 on the phone, I wouldn't have been able to know.

8 MR. GILLESPIE: 981.

9 - - - - -

10 (Deposition Exhibit 981, 8/24/2023 GNETS  
11 Interview Notes, was marked for  
12 identification purposes.)

13 - - - - -

14 Q. This will be shorter, I promise.

15 A. That's fine.

16 Q. Dr. Wiley, do you recognize that?  
17 This document.

18 A. Yes.

19 Q. And what is this?

20 A. These are my notes from my  
21 conversation with Dr. Cassandra Holifield.

22 Q. And was that conversation on August 24  
23 of this year?

24 A. That's correct.

25 Q. And you took these notes, correct?

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1 A. Yes.

2 Q. And again the -- these were taken  
3 contemporaneously with that discussion?

4 A. Yes.

5 Q. I think I just have one question for  
6 this one.

7 So on this first page here, about a  
8 third of the way down, there's the line that  
9 begins "Behavior specialist."

10 It goes "behavior specialist; behavior  
11 interventionist; a lot had BCBA, RBT; different  
12 background; some level of certification, most  
13 but not all."

14 Do you see that?

15 A. Yes.

16 Q. And if you want to, you can take a  
17 look or you could take my word for it. That  
18 same language is included in the second to last  
19 line in your notes from your call with Ms. Low.

20 A. Okay.

21 Q. And so my question is just why is  
22 that?

23 A. Okay.

24 MS. JOHNSON: I'm sorry. Which  
25 line?

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1 MR. GILLESPIE: It's the second to  
2 last.

3 THE WITNESS: Yeah, I see it.

4 MR. GILLESPIE: On the third page.  
5 Well, I guess the fourth to last line, but  
6 second group -- second to last grouping.

7 A. So I think that probably what happened  
8 there was I had this conversation first and I  
9 may have copied it here as something that I  
10 wanted to make sure to talk about.

11 Q. Follow up on.

12 A. Whether or not I did, I'm not sure.

13 Q. Okay. And there are a couple other  
14 areas, I'll represent to you, in this  
15 Exhibit 981 where some of the same language  
16 seems to appear in both this and Ms. Low's.  
17 Would that be the same thing?

18 A. I think that's -- yeah.

19 Q. Okay.

20 A. That's my recollection.

21 Q. That's it for that one. I told you it  
22 would be easy.

23 MR. GILLESPIE: Let's do ...

24 982, please.

25 - - - - -

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1 (Deposition Exhibit 982, 8/25/2023  
2 Interview Notes, was marked for  
3 identification purposes.)

4 - - - - -

5 Q. Dr. Wiley, do you recognize this?

6 A. Yes.

7 Q. And what is Exhibit 982?

8 A. These are my notes, personal notes,  
9 from my -- when I had contemporaneous speaking  
10 with Jeannie Morris. Yeah. This was a school  
11 climate whole school [sic] reports -- supports.

12 I think she was director of what maybe  
13 once was PBS -- PBIS, but I think they've  
14 combined it with school climate.

15 These are my notes.

16 Q. And you spoke with Jeannie Morris on  
17 August 25 --

18 A. Yes.

19 Q. -- of this year, correct?

20 A. That's right.

21 Q. All right. So just another couple  
22 questions here.

23 On this first page, about two-thirds  
24 of the way down, the line beginning "Schools  
25 invited," do you see that?

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1 A. Yes.

2 Q. And then later on you say "invited to  
3 use SWIS," and I think that's referring to  
4 school-wide PBIS, but is that something else?

5 A. SWIS is a school-wide information  
6 system.

7 Q. Okay.

8 A. So it's a data collection --

9 Q. Ah.

10 A. -- that's often used with PBIS. I  
11 know that some Georgia schools use it.

12 Q. On the next line there's language  
13 "feasibility, legal issues."

14 What is that referring to?

15 A. I think it's referring to -- so I  
16 believe that Georgia had something related to  
17 PBIS and/or school climate where they were  
18 encouraging schools to report some data.

19 And what Jeannie Morris was saying  
20 here was that they got some pushback from the  
21 principals thinking we're sharing data that  
22 could be confidential.

23 So they were worried that -- and I  
24 don't know the details of it, but she was saying  
25 one of the reasons why they didn't get



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1 consistent collection and reporting of that SWIS  
2 data was the principals were worried about.

3 And the feasibility may have been that  
4 some of them pushed back on whether they could  
5 collect this data, whether it was feasible.

6 Q. Why did you ask about SWIS?

7 A. I think that at that time I --  
8 certainly part of the conversation here was,  
9 again, data about PBIS implementation, but I was  
10 also curious whether or not they had data on  
11 outcomes related to PBIS implementation.

12 So I think that that was what I was  
13 looking for, was whether or not they had any way  
14 to say hey, not only are we doing PBIS, but here  
15 are the outcomes that we're seeing based on  
16 implementation of PBIS.

17 That's my memory of why that came up.

18 Q. And do you recall if they had that  
19 capability?

20 A. And I think that's why she said that  
21 they don't have it, because there was some  
22 pushback at the school level in terms of  
23 collecting and reporting these data. That's my  
24 memory of that.

25 Q. On page 2 of those notes, so on the

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1 flip side. It's two-sided.

2 You have the bolded question "What do  
3 you think it would take to scale up FBA/BIPs  
4 across the state?"

5 Do you see that?

6 A. Yes.

7 Q. Did you ask that question?

8 A. I'm going to try to remember.

9 And I really think it was Ms. Low who  
10 first brought up the upcoming FBA tier three  
11 training. And, again, I might have thought that  
12 I wanted to ask her this.

13 I do remember that we had some  
14 discussions about the challenges and, you know,  
15 barriers to implementation, but I obviously  
16 didn't include many of my notes related to that.

17 I remember as I had this conversation  
18 that it was pretty consistent with at least some  
19 of the research that I reviewed related to  
20 difficulties implementing tier one, two, three  
21 of PBIS, but I can't say that I remember or  
22 there's anything in my notes that indicates ...

23 Q. And you don't have a specific  
24 recollection of what --

25 A. Yeah. For FBA, BIP, no. I feel like

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1 maybe we got a little bit more into it when we  
2 talked about tier two, but ...

3 No.

4 Q. Okay. And I'm sorry. Again just to  
5 make sure that the record's clear and I'm able  
6 to --

7 A. Yeah.

8 Q. You don't have a specific recollection  
9 of what either Ms. Morris or Ms. Low said in  
10 response to that question?

11 A. I don't think so. I think -- now, I'm  
12 going to say something, but I'm not sure it was  
13 in this conversation or if -- what I was  
14 remembering, but I think one of the people that  
15 I spoke to about functional behavior assessment,  
16 whether or not it's in my notes or in my report,  
17 was that there were some schools -- I got to be  
18 careful because it might have been just PBIS  
19 generally.

20 One of the challenges is if you have a  
21 school where discipline problems are very low  
22 and then there's a perception that this isn't  
23 really us, this is something for schools that  
24 have lots of trouble. Really anecdotal.

25 And, again, I don't remember if that

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1 was in relation to we don't need functional  
2 behavior assessment or we don't need positive  
3 behavior support.

4 Does that make sense?

5 But I'm really guessing. And it's not  
6 something I think is here in these notes and I  
7 don't think I said anything about that.

8 I did speak about, again, challenges  
9 for implementation, but I don't know that I  
10 spoke about that specific conversation.

11 I can clarify if you need me to.

12 Q. I think I'm just ...

13 So you made the statement one of the  
14 challenges is if a school has a low level of  
15 discipline problems.

16 A. I just made that statement. Right?

17 Q. Yeah.

18 So I'm just trying to understand what  
19 you -- this is something for schools that have  
20 lots of trouble.

21 You're saying that there's this  
22 perception with schools that don't have a lot of  
23 students with behavior-related issues that use  
24 of FBAs and BIPs are reserved for --

25 A. And if I were forced to choose, I

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1 would say that was probably more about PBIS  
2 generally than FBA.

3 And I do remember -- so not only when  
4 I was with Fairfax County was I part of the team  
5 of people that train people in functional  
6 behavior assessment -- I sound like I'm  
7 bragging, but I kind of -- the emerging  
8 initiative of PBIS I kind of discovered. And I  
9 started talking to people.

10 And I remember even back then there  
11 was this same kind of issue, where if you had a  
12 very low number of discipline problems people  
13 might say "Why do I have to do all of these  
14 things?"

15 Now I want to be careful, to say that  
16 I don't recall -- I feel like I had that  
17 conversation, but I don't have it in my notes  
18 and I can't remember if I talked about that  
19 specifically.

20 But everybody in PBIS will talk about  
21 commitment and buy in, and that is one of the  
22 issues with commitment and buy in from the  
23 research, that there has to be a perception that  
24 this is a need for our school.

25 Q. Thank you, Doctor.

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1 And I don't mean to be rude, but we  
2 are interrupting each other just a little bit.  
3 So thank you. I appreciate that.

4 Do you remember whether there was  
5 pushback regarding PBIS data from specific  
6 schools or LEAs or what the issue there was?

7 MS. JOHNSON: Object to form.

8 A. She did not identify any specific  
9 schools.

10 Q. Okay. Let's look at the bottom of  
11 page 2 here of these notes.

12 Do you see the line "GNETS - FBA  
13 eventually over time"?

14 A. Yes.

15 Q. Do you recall what that means?

16 A. I just said in our break that --  
17 lesson learned. Next time I take these kind of  
18 notes, for my sake and for people who are  
19 looking at them -- so I apologize for that. Let  
20 me see.

21 I don't remember what the context of  
22 that phrase is or what it means here. I'm  
23 sorry.

24 Q. No. Thank you for -- thank you for  
25 letting me know.

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1 Looking at the next line there.

2 There's the line "GNETS have done something  
3 wrong."

4 Do you know what that means?

5 A. I think near the end of the  
6 conversation Jeannie Morris, who I can't  
7 remember how many years she had with GNETS, she  
8 was expressing that she felt really bad that in  
9 the suit there was the sense that, you know,  
10 GNETS was this terrible place. And so I might  
11 have just been typing some notes.

12 It was more of her personal feelings  
13 that there was a lot of bad feeling among GNETS  
14 personnel and -- past and present, that they  
15 felt like they were being unfairly  
16 characterized. That's what I recall that phrase  
17 referring to, some of her last comments.

18 Q. And then your final line there,  
19 "Reduction in number of GNETS."

20 Do you recall what that referred to?

21 A. I think that she might have mentioned  
22 that since the 2016 lawsuit enrollment in GNETS  
23 had declined.

24 And, again, it didn't make it in my  
25 report, but I remember looking at something, it

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1 might have been one of the expert reports, where  
2 they showed the breakdown by disability and by  
3 year, and I think she just mentioned that.

4 Q. Sure.

5 A. She's kind of saying hey, we're  
6 already reducing our numbers in GNETS. It was  
7 her statement. I think.

8 Q. So we've gone through your notes with  
9 Ms. Low, Dr. Holifield, and Ms. Morris, but you  
10 also spoke with Ms. Brooke Cole, correct?

11 A. Yes.

12 Q. And what's -- do you recall what  
13 Ms. Cole's title is?

14 A. I'm sorry. I don't. I would have  
15 look at my notes.

16 Q. Would you have spoken with Ms. Cole at  
17 approximately the same time that you spoke --

18 A. Probably near that same time. I think  
19 scheduling was a little tricky with a couple of  
20 them. So there might have been one that was  
21 like a week after, a week before. I don't  
22 remember.

23 Q. And --

24 A. It's on my Outlook calendar. I could  
25 find it, but ...



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1 Q. Is there a reason why you don't have  
2 notes for Ms. Cole?

3 A. I am not sure. I can't remember -- if  
4 she was last, it might have been that I was kind  
5 of comfortable with the kinds of things that I  
6 was asking about and didn't have to prompt  
7 myself. But I am not sure why I don't. I don't  
8 have an answer for why I don't have those notes.

9 Q. Do you recall what you discussed?

10 A. Similar things, I think. And I do  
11 think Brooke Cole also had some previous  
12 experience.

13 She might have been current. Is that  
14 true? I can't remember. I'm sorry. If I look  
15 through my notes again, I could get some answers  
16 for you.

17 Q. Do you recall anything that she told  
18 you specifically that informed your opinions in  
19 this case?

20 A. I don't think. If she did, then I  
21 would have put it in a footnote about --  
22 something that was said to me in my report.

23 Q. So for these conversations that you  
24 had, Dr. Wiley, did you take any steps to verify  
25 any of the representations that were made?

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1 MS. JOHNSON: Object to form.

2 A. Verify any of the representations that  
3 were made. I mean, that's pretty general.

4 Again, because when I -- and I know  
5 that this may be, like, a section that you're  
6 getting into later, but I know that in the  
7 expert reports there were some things said about  
8 what was and what was not happening in GNETS and  
9 what was and was not happening in the zone  
10 schools. We can talk about that later.

11 But in order to rebut the claims that  
12 were being made about, you know, these kids  
13 could be included, I don't -- I -- I didn't have  
14 to look at those things super closely in order  
15 to make those judgments.

16 And my other concern with it was, you  
17 know, when I compare some of the things that  
18 were said in my conversations to some of the  
19 findings, for example, in Dr. McCart's report, I  
20 mean, my impression was that the way that she  
21 characterized GNETS and came to her conclusions  
22 was pretty subjective.

23 And I didn't see a clear method for  
24 how she made sure that the information she was  
25 collecting and compiling was objective and not

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1 based on sort of her prior conceptions about  
2 separate schools like GNETS. Same thing with  
3 the records review.

4 And, now, there are ways to structure  
5 an observation to come up with clear categories  
6 of occurring or not occurring or things related  
7 to, you know, documents and records, but I  
8 didn't see that method used.

9 So in that sense, you know, no, I  
10 didn't have the opportunity to corroborate these  
11 things. I was kind of saying, you know, there  
12 are people who work in these programs who have  
13 said that's not accurate.

14 So it does to me, in my opinion, call  
15 in question the accuracy of everything that  
16 Dr. McCart, for example, put in her findings.

17 Q. And what does?

18 A. Talking to the folks. And also her  
19 method.

20 Q. And do you -- well, we can hold off on  
21 that.

22 But, Dr. Wiley, earlier you said "I  
23 don't have to look at those things super closely  
24 in order to make those judgments."

25 I just want to get an understanding of

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1 what "those things" are.

2 A. Rebutting the claims that I listed  
3 that I rebutted from the expert reports.

4 So an example would be we now know how  
5 to include the vast majority of kids with  
6 behavior-related disabilities. That's, in my  
7 opinion, not correct and not consistent with  
8 knowledge in the field.

9 So that would be an example of, you  
10 know, that doesn't require me to specifically  
11 look at -- to do the observations and the  
12 extensive records reviews that over years I  
13 think, in my understanding, Dr. Putnam and  
14 Dr. McCart did.

15 Tell me if you need that clarified,  
16 because I can say it again.

17 Q. No. Thank you. I appreciate that.  
18 Are you familiar with the term  
19 "community service board"?

20 A. Not very familiar. So I think no.

21 Q. Did you communicate with any staff of  
22 the Department of Behavioral Health and  
23 Developmental Disabilities?

24 A. I did not.

25 Q. Did you communicate with Heather

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1 George about the GNETS program at all?

2 A. I did not.

3 Q. Are you familiar with the  
4 Interconnected Systems Framework, or ISF?

5 A. I am generally familiar and I am  
6 familiar with a recent randomized control trial.  
7 I know that it's something where they're trying  
8 to bring essentially wraparound together with  
9 PBIS.

10 So I know a little bit about it.  
11 Again, I would describe wraparound and the  
12 framework as a promising practice, but we  
13 haven't solved all the problems and we don't  
14 know if that makes it possible to include the  
15 vast majority of kids with behavior  
16 disabilities. Behavior related.

17 Q. And you didn't specifically consider  
18 any version of the ISF manual in preparing your  
19 rebuttal report, correct?

20 A. A specific version of the manual. I  
21 did not.

22 Q. Did you consider any version of the  
23 manual in considering your report?

24 A. The ISF manual?

25 Q. Yes.

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1 A. No.

2 Q. Okay.

3 A. I did have a section where I  
4 responded -- and I know that Dr. Putnam in  
5 particular spent a lot of time. He gave some  
6 examples of, you know, wraparound research.

7 And I think, again, it's promising,  
8 but we're not at a point where we know how to do  
9 it. And we also don't know how well that serves  
10 kids with behavior-related disabilities in  
11 general ed in particular.

12 I'm hopeful. You know, I think -- I  
13 hope I made that clear. I hope we're able to  
14 develop that and solve all the implementation  
15 problems. But I don't think it's right to say  
16 that wraparound is ready for prime time.

17 Q. Are you aware whether Georgia offers a  
18 high fidelity wraparound intervention for  
19 children with behavior-related disabilities?

20 A. I am not aware.

21 And I will say that wraparound is not  
22 my heavy sort of area of focus and expertise. I  
23 did read in the reports about some of the  
24 community health and some of the things that  
25 are -- have been started and are being used to

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1 some degree, but I can't really characterize  
2 what exactly is in place, how it's accessed, how  
3 well it's being implemented.

4 I was a little better able to look at  
5 things like PBIS implementation. So yeah.

6 Q. Sure. That's helpful. Thank you.

7 Do you know whether the state of  
8 Georgia's done any research relating to  
9 educational outcomes for children receiving high  
10 fidelity wraparound intervention?

11 A. I don't think I'm aware. I do think  
12 that I saw mention of some grants, which I don't  
13 know if they're research grants or  
14 implementation grants, related to, you know,  
15 community mental health.

16 Q. Are you aware whether Georgia  
17 encourages the use of PBIS -- of the PBIS  
18 framework in its school?

19 A. I am aware. And my opinion is yes,  
20 they do encourage it.

21 Q. Are you aware whether the state of  
22 Georgia has a PBIS strategic plan?

23 MS. JOHNSON: Object to form.

24 A. I am not aware. I don't recall seeing  
25 it on the website, but ...

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1 I think that they do, but I'm not sure  
2 exactly where I saw that.

3 Q. Are you aware of whether the state of  
4 Georgia has endorsed a system of care approach  
5 to coordinating its programs and services for  
6 children with behavior-related disabilities?

7 MS. JOHNSON: Object to form.

8 A. I am not aware. I think that that was  
9 mentioned, again, in the report. And without  
10 looking at Dr. Putnam's report I think that  
11 there is endorsement of a system of care, but  
12 that's just -- I may not be remembering  
13 correctly.

14 Q. Are you aware of whether the state of  
15 Georgia offers intensive family intervention  
16 services for children with behavior-related  
17 disabilities?

18 MS. JOHNSON: Object to form.

19 A. I am not aware of if or how they  
20 provide that.

21 Q. And do you know whether the state of  
22 Georgia has endorsed that service as effective  
23 for children who may be at risk for restrictive  
24 placement?

25 MS. JOHNSON: Object to form.



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1 A. If Georgia has?

2 Q. Yes.

3 A. No, I'm not aware.

4 Q. So we discussed that you've seen  
5 Dr. McCart's -- actually, let me go back really  
6 quick.

7 Do -- are you familiar with the term  
8 "system of care"?

9 A. Only from reading these reports.

10 Again, my focus is much more on  
11 school-based. I know enough about related  
12 services and wraparound from my, you know, my  
13 training. But -- when it gets into community  
14 services, I will say that that's not as much my  
15 area of expertise.

16 Q. And just so that I have an  
17 understanding, if I ask you to define what a  
18 system of care is, would that be something  
19 outside of your area of expertise?

20 A. Yeah, that term specifically. I think  
21 if you used the term "wraparound" -- and what I  
22 just don't know is how much those two things  
23 relate to each other.

24 But wraparound is the idea that, you  
25 know, you wrap around the child services of

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1 various kinds to address their needs.

2 I think system of care might relate to  
3 that, but I'm not sure.

4 Q. Thank you.

5 So earlier, Doctor, you told me that  
6 you reviewed the transcripts for Dr. McCart and  
7 Dr. Putnam in their depositions.

8 Have you reviewed anything else  
9 related to this matter since completing your  
10 report?

11 A. I have not. And again I want to  
12 emphasize that I didn't read thoroughly their  
13 depositions, but I looked at some parts of it.

14 Q. And I'm guessing -- is there anything  
15 from your view of either of those that changes  
16 your opinions in your report?

17 A. No.

18 Q. No.

19 So, Dr. Wiley, before we dive into the  
20 specifics of your report, I just -- I want to  
21 begin by getting clarification of what opinions  
22 that I understand you're not giving in this  
23 case.

24 So, Dr. Wiley, you offer no expert  
25 opinions on whether any students in the GNETS

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1 program could or should be appropriately served  
2 in a general education environment, correct?

3 A. On any individual students?

4 Q. Correct.

5 A. No. And I don't think the other  
6 experts did either. If I'm right, but -- yeah.

7 Q. And I'm just asking here --

8 A. Yes.

9 Q. -- to get an understanding --

10 A. No, that's right. That's right. No  
11 individual students.

12 Q. What you are and are not saying.

13 A. Yes. Good.

14 Q. You also offer no expert opinions on  
15 the sufficiency of the provided mental health  
16 and therapeutic services to meet the needs of  
17 the students in the GNETS program, correct?

18 A. Individual students or students  
19 overall?

20 Q. Either.

21 A. Either. No, I'm not.

22 Q. You're not offering any opinions of  
23 Georgia's implementation of PBIS, correct?

24 MS. JOHNSON: Object to form.

25 A. Well, I think that I did, you know,

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1 look at their level of implementation and sort  
2 of characterize it compared to other states, you  
3 know, around the country.

4 I did look at some of their training  
5 materials and their website where they're trying  
6 to support schools and help them.

7 So in that sense I do think that I --  
8 I looked at that in forming my opinion. Yeah.

9 Q. But I guess my question is, are you  
10 offering expert opinions in this case about  
11 Georgia's implementation of PBIS?

12 A. So opinion about whether or not  
13 they're doing it all, doing it well enough,  
14 doing it as much as you would --

15 Q. Yeah.

16 A. -- I mean those kinds of things?

17 Q. Exactly.

18 A. I mean, in that sense that I think I'm  
19 giving an opinion, and that opinion is that they  
20 are implementing PBIS.

21 You know, one of the challenges here  
22 is knowing what's possible and whether or not,  
23 you know, Georgia's doing what you would expect  
24 a state to do in terms of supporting PBIS.

25 My opinion is that they're pretty much

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1 middle of the road in terms of doing that, if  
2 that makes sense. So I think that they're doing  
3 many of the right things, they're providing  
4 training. I think that they're recognizing  
5 schools that are doing it. I think recently,  
6 again, ongoing this year they're providing  
7 training in tier three.

8 So implementing -- the trick for me is  
9 implementing PBIS is a pretty complex matter,  
10 and I think that I have evidence that they're  
11 doing many of the things that you would expect  
12 to do.

13 But I did not focus my report on going  
14 into schools implementing PBIS and providing,  
15 like, sort of that fine-grained analysis of  
16 exactly how well it's going.

17 Now, the data that they collect, not  
18 all of them, are those fidelity data, and that's  
19 one way we get a look at how well are schools  
20 implementing PBIS.

21 And I did compare -- I did say when we  
22 look at national data from the national Center  
23 on PBIS it's a very small percentage of schools  
24 that we can say from data are implementing these  
25 things with fidelity.

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1                   So comparing Georgia to that and  
2                   providing that kind of opinion.

3                   And I think the other thing that I've  
4                   tried to say in my report and I want to say  
5                   here, and maybe it will come up again, is that  
6                   one of the challenges of implementing PBIS is  
7                   it's a framework. It's not a curriculum or a  
8                   program that has step one, step two, step three.

9                   And so I think even when you use those  
10                  tiered fidelity inventories, they look like  
11                  that. Do you have a team? Do they meet? Do  
12                  they identify interventions?

13                  And, by the way, I'm very respectful  
14                  of the work in PBIS, but I think it's a  
15                  implementation -- one of the reasons why we  
16                  don't see better implementation is we don't have  
17                  specific ways to really evaluate implementation  
18                  of PBIS.

19                  I didn't mean to go on there, but I  
20                  also don't want to say I'm not giving any  
21                  opinion, but I'm giving the opinion that I feel  
22                  like I have enough information to give an  
23                  opinion.

24                  Q.           And I want to make sure I understand,  
25                  too.

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1                   So the opinion that you're giving on  
2 Georgia's implementation of PBIS is the extent  
3 to which schools in the state of Georgia have  
4 implemented some tier of PBIS, correct?

5           A.           Right. That's what the state reports.

6           Q.           And that's based only on the state  
7 data on the PBIS website that you looked at,  
8 correct?

9           A.           Yes. Yes, that's correct.

10          Q.           And so your opinion on PBIS is just  
11 measuring the state reported data of its own  
12 implementation compared to data available to you  
13 from other states?

14          A.           Yeah. And that's a universal thing,  
15 though, for states to complete their own tiered  
16 fidelity inventories. So it's not that outside  
17 people come in and say okay, we're going to look  
18 at you. The way that it works -- and it's good,  
19 it's just not perfect --

20          Q.           Sure.

21          A.           -- for them to fill it out themselves.

22          Q.           I want to make sure -- no, you're  
23 great.

24                   I just want to make sure that I'm  
25 getting this exactly right, that the extent of

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1 your opinion on Georgia's implementation of PBIS  
2 is just measuring that state reported data --  
3 actually, let me withdraw that.

4 Comparing that state reported data  
5 from Georgia to other states. That's -- that's  
6 your opinion on Georgia's implementation of  
7 PBIS, correct?

8 A. Yeah. If my opinion is to  
9 characterize their implementation, it's that.

10 And then the other thing that's kind  
11 of hard to get throughout my report is it's hard  
12 to give an opinion on a level of implementation  
13 when implementation is not really clearly  
14 defined in the field yet. That's my opinion.

15 And so you're right. I mean, I would  
16 have to rely on whatever self-report data that  
17 they have. I didn't go into schools and use  
18 the -- and, by the way, that's one of them, you  
19 know, the fidelity instrument.

20 But relying on what they've said.  
21 They're in a very similar place. And in some  
22 ways at that tier one level of implementation  
23 above that 24 percent that's reported for all  
24 states.

25 And the other part of my opinion is to



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1 say implementation is more challenging than I  
2 think the experts are saying. And so it's not  
3 like hey, we just don't provide enough training,  
4 we don't have the motivation, it's that these  
5 frameworks are very complex, difficult to  
6 sustain. I think they're good, you know.

7 One of the things I wrote about in my  
8 report is in a lot of ways they've made more  
9 progress than other things, but it's still we  
10 have to be realistic about where we are in terms  
11 of what we know about implementing PBIS.

12 Q. Understood. Thank you.

13 Dr. Wiley, you're not offering any  
14 expert opinions on the sufficiency of the scope  
15 or quality of mental health and therapeutic  
16 services available to students in the GNETS  
17 program, correct?

18 A. Certainly not individual students.  
19 And then also no about -- about whether or not  
20 the scope and quality is sufficient.

21 Q. And you're not offering any expert  
22 opinions on the sufficiency of the scope or  
23 quality of services and supports provided in  
24 general education settings in Georgia, correct?

25 A. That is correct. I'm not providing

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1 that opinion, but I am providing an opinion  
2 about the claims by the experts that we now know  
3 how to do that and schools could do it if they  
4 just did it.

5 Q. Understood.

6 A. Does that make sense?

7 Q. Yeah.

8 You're also not offering opinions on  
9 the scope or quality of community mental health  
10 and therapeutic services in the state of  
11 Georgia, correct?

12 A. That's correct.

13 Q. And you're not offering any expert  
14 opinions on whether any aspect of the education  
15 that students in the GNETS program receive is or  
16 is not inferior to that of students in general  
17 education schools in the state of Georgia,  
18 correct?

19 A. So you're saying I'm not offering an  
20 opinion about what's actually happening within  
21 GNETS schools?

22 Q. On whether any aspect of the education  
23 that students receive -- students in the GNETS  
24 program receive is or is not inferior to that of  
25 students in general education settings in the

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1 state of Georgia.

2 MS. JOHNSON: Object to form.

3 A. Well, I'm not, but I also am concerned  
4 about, again, the use of "inferior" outside of  
5 the individualized context of an IEP. You know,  
6 what you mean by "inferior."

7 Especially when we say hey, these --  
8 they should have an equal educational  
9 experience. I understand what we mean when we  
10 say that, but in some ways it's different.  
11 Special education is meant to be individualized  
12 and different from what all kids, you know, get.

13 So I don't know that I'm going in and  
14 saying in this particular kid's case the  
15 educational experience is inferior to these kids  
16 in another place.

17 But I am trying to comment on how we  
18 ought to be thinking about that. And I think  
19 rebutting some of the conclusions -- again,  
20 partly based on the fact that I don't think the  
21 experts brought up individual kids and talked  
22 about their individual experiences either.

23 And then the methodology that might  
24 have sort of helped that, the observation and  
25 the records review, strikes me as nonsystematic.

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1 And it's kind of like these are my conclusions,  
2 but it's not clear to me how they looked and how  
3 they reviewed records.

4 And it's similar to reviewing a  
5 manuscript, which I know Dr. Putnam and  
6 Dr. McCart and I -- you know, we review research  
7 studies. You look at the method and we say are  
8 these conclusions.

9 So that was a little bit of the hat  
10 that I had on when I said, you know, have they  
11 provided a student that I can look at and also  
12 have their methods accurately characterize what  
13 is and is not happening in GNETS and what is or  
14 is not happening in the general ed schools. I  
15 feel like we don't have that is my opinion. We  
16 don't have that information to look at.

17 Q. But you didn't conduct any individual  
18 or systematic review of educational settings in  
19 Georgia for appropriateness of educational  
20 services, correct?

21 A. I didn't. I don't think anybody else  
22 did either.

23 Q. And you're not offering any expert  
24 opinions on the methodology used by either of  
25 the United States' experts in this case, are

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1 you?

2 A. I am offering my opinion here in this  
3 deposition. I am not sure if I made comments  
4 about the approach used in my report. I can't  
5 recall.

6 I think that the one comment that I  
7 made in my report is that they didn't identify  
8 individual kids who they say -- who you would  
9 say exemplify the unnecessary segregation.

10 Does that make sense?

11 Q. It does.

12 A. So I'm saying, you know, to do that,  
13 you really would have had to have done, in my  
14 opinion, something different. Yeah.

15 Q. And you're not offering any expert  
16 opinions in this case on whether any students in  
17 the GNETS program could be equally or better  
18 served in a more integrated environment,  
19 correct?

20 A. I am offering an opinion based on  
21 research about when somebody says a bunch of --  
22 so if I'm talking about the kids in general,  
23 like the population, right, that's sort of my  
24 opinion, is saying when they say kids with  
25 behavior-related disabilities could be served in

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1 general ed with these particular settings,  
2 that's the big part of my section where I say  
3 well, hold on. You know, is this really the  
4 consensus of the field? How much do we actually  
5 know? Sorry.

6 Q. And -- no. No. Dr. Wiley, --

7 A. I interrupted you again. I apologize.

8 Q. -- I appreciate what you're saying,  
9 and I promise you we're going to spend most of  
10 our time today talking about what opinions you  
11 are giving, but --

12 A. Okay.

13 Q. -- I just -- you know, before we get  
14 into that, I want to have some clarity on the  
15 areas where you're not providing an expert  
16 opinion.

17 A. Okay.

18 Q. And so just here I want to clarify  
19 you're not offering any expert opinions on  
20 whether any students in the GNETS program could  
21 be equally or better served in a more integrated  
22 environment, correct?

23 A. Any individual students. No, I'm not.  
24 Is that okay, for me to clarify it that way?

25 Q. Yeah.

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1 A. Okay.

2 Q. But then I'm going to ask any group of  
3 students.

4 A. Kids with behavior-related  
5 disabilities I think I am offering an opinion.

6 But I think what you're getting at --  
7 I don't mean to be -- I'm sorry.

8 Q. No.

9 A. You're saying that I didn't go in and  
10 look at the program to say are there kids here  
11 that could be in general ed if they just did X,  
12 Y, or Z.

13 Q. Right.

14 A. That, I think, is accurate.

15 But I think when we're talking about  
16 the population of kids and when we've looked at  
17 them systematically through research, that's the  
18 opinion that I'm offering.

19 Q. But nothing relating to Georgia  
20 specifically or GNETS specifically, --

21 A. A specific --

22 Q. -- correct?

23 A. -- school or a specific student,  
24 that's correct.

25 Q. Or even statewide.

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1 A. Right.

2 Q. Yeah. Thank you.

3 As I understand your report, at least  
4 sections II through V, your purpose was to  
5 correct what you saw to be misunderstandings on  
6 the literature around placements interventions  
7 generally, correct?

8 A. Yes.

9 Q. And in so doing, you provide a defense  
10 for having separate placements generally,  
11 correct?

12 A. Yes.

13 Q. But, again, you're not offering expert  
14 opinions on the GNETS program itself, correct?

15 A. Well, GNETS program being a program  
16 that offers separate schools on the continuum of  
17 alternative placements. Just in that sense,  
18 yes.

19 Q. Okay. Thank you.

20 When I pause, I'm just trying to see  
21 if I can --

22 A. No.

23 Q. -- truncate things --

24 A. No.

25 Q. -- a bit.



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1           You didn't conduct any analyses of  
2       claims data for children receiving behavioral  
3       health services through Georgia Medicaid,  
4       correct?

5       A.       I did not.

6       Q.       And you're not offering any opinions  
7       in this case on that topic, correct?

8       A.       Again, the only connection, I would  
9       say, is what we know from research about  
10      wraparound services and what I view as a  
11      promising practice. And I try to say, you know,  
12      when you're looking at what can and should be  
13      done, this is what research has shown us so far.  
14      That's all.

15      Q.       Understood. Thank you.

16              You don't purport to contest  
17      Dr. Putnam's Medicaid utilization data analyses,  
18      correct?

19      A.       I am not rebutting his data.

20      Q.       And you're not offering any opinions  
21      in this case as to whether the GNETS program in  
22      particular unnecessarily segregates students  
23      with behavior-related disabilities from  
24      nondisabled peers, correct?

25      A.       Say it one more time.

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1 Q. Yeah. Absolutely.

2 A. I don't mean to put the qualifiers on  
3 it, because I think I'm offering an opinion, but  
4 I want to make sure I answer your question.

5 Q. So you're not offering any opinions in  
6 this case as to whether the GNETS program in  
7 particular unnecessarily segregates students  
8 with behavior-related disabilities from  
9 nondisabled peers, correct?

10 A. So the two things that I want to say  
11 are I am providing, I think, the criteria for  
12 how you would have to make that determination,  
13 both in terms of the requirements of IDEA and  
14 also what we know from research.

15 And then, also, when you say programs,  
16 it is true that I did not have the opportunity  
17 to, you know, spend multiple days in those  
18 programs. But I want to be careful of that one,  
19 too, because I think there are multiple  
20 different programs, and my assumption is there  
21 is some variation in the kids that they're  
22 serving and also, you know, the services that  
23 they're providing.

24 But I think that if you're saying did  
25 I go and look at individual kids in GNETS

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1 programs or individual GNETS programs, I didn't,  
2 but it's my opinion that I didn't have to to  
3 rebut the claim, right, that there are thousands  
4 of kids who are unnecessarily segregated.

5 Does that make sense?

6 Q. Yes.

7 A. Okay.

8 Q. And I track you with that.

9 A. Okay.

10 Q. But, Dr. Wiley, I just want to make  
11 sure that I have clarity on this.

12 A. Yes.

13 Q. You aren't offering expert -- an  
14 expert opinion in this case as to whether the  
15 GNETS program statewide, or any particular GNETS  
16 program, unnecessarily segregates students with  
17 disabilities, correct?

18 A. I am not offering that opinion and I  
19 don't think anybody gathered the information  
20 that would allow us to make that determination.

21 Q. Understood. Thank you.

22 A. So, yeah.

23 Q. It's your expert opinion, Dr. Wiley,  
24 that some students are best served in separate  
25 educational settings, correct?

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1 A. That is correct.

2 Q. And, broadly speaking, -- well,  
3 actually, let me think if I want to shortcut  
4 this a little bit.

5 Yeah. So what categories of students,  
6 just again very generally, do you believe should  
7 be served in separate educational settings?

8 A. It isn't categories of students, it is  
9 based on their individual needs and their  
10 individual education program.

11 So I know that that's, you know, what  
12 the law says, but there's a substantive, you  
13 know, kind of reason for that. And there are  
14 some kids who have special -- or  
15 disability-related needs that require a level of  
16 intensity of programming that really can only be  
17 provided effectively and appropriately in a  
18 specialized setting.

19 So it's not that there are categories  
20 of kids. There's a determination, and I think  
21 it's one of the really important things about  
22 IDEA, that's made by the people who know the  
23 student best. And you -- so there are  
24 categories.

25 I do think that I did mention

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1 somewhere in my report that there are -- of the  
2 13 eligibility categories in IDEA, there are  
3 some students that tend to be served more often  
4 in separate placements. And that's a general  
5 reflection of the characteristics of those  
6 students and the difficulties that they  
7 typically ...

8 So when you look at it and you say oh,  
9 students with more severe disabilities may be  
10 served more often self-contained, it's logical  
11 in the sense that those students tend to have  
12 very intensive and specialized needs.

13 Q. And maybe I was inartful in my use of  
14 the word "category."

15 A. Okay. No. No. That's okay.

16 Q. You would agree that separate settings  
17 should be reserved for students who would not  
18 otherwise be successful in more integrated  
19 settings, correct?

20 A. That's what the law requires, and I  
21 fully support that. I think that we have to try  
22 to provide supports in the -- in a more  
23 inclusive setting or with students without --  
24 without disabilities.

25 But then an IEP team needs to make a

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1 determination about whether or not progress is  
2 satisfactory, right, under those circumstances.

3 So if you're asking me if that -- I  
4 believe in that logic or that ethic, absolutely.  
5 I think that unfortunately we've pressed for  
6 inclusion without really thinking very  
7 carefully.

8 It's easy to measure how many kids are  
9 physically in a general ed class. Whether or  
10 not they're making appropriate progress is much  
11 tougher to determine, but I think it should be  
12 first in our mind when we think about what's  
13 appropriate for kids with disabilities.

14 Q. And it's not your opinion, Doctor,  
15 that separate placements are inherently superior  
16 to integrated placements, correct?

17 A. They are not inherently superior, but  
18 they are logistically superior for some  
19 individualized interventions and supports.

20 Q. What do you mean by "logistically  
21 superior"?

22 A. So when I talked about the limitations  
23 of general education, for example, that have to  
24 do with the use of space, social constraints,  
25 the fact that you have large groups versus small

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1 groups, there are things about large group  
2 general education, including, you know, what  
3 activities are prioritized, that can run counter  
4 to implementing the kind of individualized  
5 interventions for some kids.

6 And then there are -- on the opposite  
7 end, in a special school it allows you to  
8 provide potentially, you know, smaller groups,  
9 environments that are more appropriate for the  
10 activities, materials. You know, focus of  
11 instruction.

12 So those are general things. And I  
13 think I have a section where I sort of talk  
14 about why is placement important. Why can't we  
15 do anything anywhere, right, in education or  
16 special education.

17 And that's what -- I would say your  
18 initial question is, is there something  
19 inherently superior about special placements.  
20 Just like any profession that has  
21 specialization, either in environments or tools  
22 or whatever, that's the advantage. It's not  
23 that it's inherent.

24 And I really made that point because  
25 people will say that. "Oh, it's inherently

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1 better to be in general education." Well,  
2 that's not true either. It doesn't matter  
3 what's actually done.

4 But some placements are configured  
5 such that it's more likely -- you're more able  
6 to provide intensive supports for some kids.

7 Q. So maybe this gets at what I think  
8 you're telling me. Would you agree that, all  
9 other factors being equal, students with  
10 disabilities -- and, actually, let me preference  
11 this by saying I want to talk separately from  
12 your understanding of what the legal  
13 requirements are --

14 A. Okay.

15 Q. -- and your opinions as an expert in  
16 this field.

17 A. Okay.

18 Q. So with that caveat, would you agree  
19 that all things, all other factors being equal,  
20 students with disabilities should be placed in  
21 the most integrated environment suited to meet  
22 their needs?

23 A. The "all factors being equal" is a  
24 little confusing.

25 I think on an individual basis



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1 students absolutely -- like, there should be a  
2 weight to having students taught with their  
3 nondisabled peers. There should not be an  
4 unnecessary teaching in a -- less inclusive  
5 settings.

6 Q. Okay. Thank you.

7 A. Not necessarily just a legal matter,  
8 but I do think that if we can provide  
9 appropriate IEPs to kids in more inclusive  
10 settings, then we should do that.

11 And for many kids we can't, and that's  
12 reflected in placement data, including for kids  
13 with behavior-related disabilities. But for  
14 some kids it's not appropriate and the IEP team  
15 is the one that knows the kid; the -- what's  
16 going on in general ed, what's going on in the  
17 continuum placements, and what would be the most  
18 appropriate level of inclusion.

19 If you want to -- I'm trying to take  
20 it out of the legal LRE kind of thing.

21 Q. Sure.

22 And, Doctor, you said there should not  
23 be unnecessary teaching in less inclusive  
24 settings. And we're going to talk about what  
25 unnecessary means later, but my question is just

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1     why is that.

2           A.           I think that because -- I use the  
3     historical example that there was a time when  
4     kids with disabilities were sort of  
5     automatically taught in self-contained  
6     classrooms or in special schools. Right.

7                       And then -- I think that there is  
8     value to having kids being taught and having  
9     opportunities to interact with kids who don't  
10    have disabilities. There's value.

11                      I think there's moral value, and I  
12    think that there at times, although, again,  
13    people don't tend to get into the details, which  
14    are important, there are potential educational  
15    values.

16                      However, the reality is that there are  
17    some kids where teaching them in those settings  
18    would undercut their ability to make -- to learn  
19    and to make progress.

20                      So I hope that that answers it.

21                      So I really do think that the law  
22    makes sense from an ethical perspective. And  
23    the way that I think about it is that  
24    presumptive rights. I'm sorry to bring it into  
25    IDEA and the law, but there is weight to we

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1 shouldn't unnecessarily or haphazardly or  
2 randomly separate kids for educational purposes  
3 when we don't have to.

4 Q. Thank you. No, that does answer --

5 A. Okay.

6 Q. But if I understand you correctly,  
7 it's your position that for some minority, or  
8 maybe I should say number of students with  
9 emotional and behavioral disabilities, separate  
10 placements may be better suited to meet those  
11 students' needs, correct?

12 A. That is correct.

13 Q. But even there would you generally  
14 agree that students with disabilities should be  
15 able to access general education settings and  
16 peers to the greatest extent possible consistent  
17 with their needs?

18 A. "To the greatest extent possible" is  
19 an important qualifier, and also to the greatest  
20 extent appropriate. I know that -- and it's  
21 great because we have this continuum -- when we  
22 think of a continuum of --

23 Q. I'm sorry.

24 A. You go ahead.

25 Q. I just want to -- was that a yes at

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1 the beginning, to the question? Because I want  
2 to make sure, before we get to that, --

3 A. To the greatest extent possible, yes.

4 Q. Okay. Thank you.

5 A. But I would say -- can I just --

6 Q. Yes, please.

7 A. To the greatest extent appropriate and  
8 possible.

9 Q. Yes. Okay.

10 A. There are students who, because of the  
11 nature of their disabilities, even, you know,  
12 being in the same, let's say cafeteria, and I've  
13 worked with many of these students, can be very  
14 challenging for the student. And it can be very  
15 challenging because it may disrupt or -- you  
16 know, there are a lot of things that can happen.  
17 And so we have to look at that.

18 You know, we can't just say we believe  
19 that it would be great if all kids ate in the  
20 cafeteria together, just to give you an example.  
21 It's an individualized determination. So  
22 appropriate on an individual basis, yes.

23 Q. Thank you.

24 I'm going to do a couple questions,  
25 and then we'll break for lunch, if that works.

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1 A couple. A lawyer's couple.

2 So kind of operating from those same  
3 caveats about appropriateness and possibility,  
4 should students with disabilities have the  
5 opportunity to participate in specific classes  
6 with nondisabled peers if they're able to and  
7 would benefit from doing so?

8 MS. JOHNSON: Object to form.

9 A. If they're able to and they would  
10 benefit from doing so. Yes.

11 Q. Should students with disabilities have  
12 the opportunity to participate in electives with  
13 nondisabled peers if they are able to and would  
14 benefit from doing so?

15 A. If --

16 MS. JOHNSON: Object to form.

17 A. Okay. If they're able to and if they  
18 would benefit from it.

19 And another thing that we don't often  
20 mention here --

21 Q. I'm sorry. I want to get the --

22 A. Go ahead.

23 Q. I want to get the yes or no --

24 A. Yeah.

25 Q. -- before the explanation.

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1 A. This is the professor -- you said it's  
2 lawyer time. This is a professor --

3 Q. Yes.

4 A. -- talking too much. My fault.  
5 Go ahead.

6 Q. No. No.

7 So I want to hear your explanation,  
8 but --

9 A. Okay.

10 Q. But, again, should students with  
11 disabilities have the opportunity to participate  
12 in electives with nondisabled peers if they're  
13 able to and would benefit from doing so?

14 MS. JOHNSON: Object to form.

15 A. I would say yes. And the only thing I  
16 was going to add is if they want to. Sometimes  
17 we forget when we're sort of toggling over this  
18 is that kids have experiences and perceptions.

19 And I don't know that I mentioned this  
20 research, but there's some kids who really like  
21 their special classrooms and their special  
22 schools. And so it's important to not only say  
23 can they and will they benefit, but also --  
24 which could be wrapped up in benefit. Do they  
25 find it emotionally beneficial. Let's say it

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1 like that.

2 Q. Thank you.

3 A. Yeah.

4 Q. I appreciate that. And I'm not trying  
5 to cut off your explanation.

6 A. No. No.

7 Q. I just want --

8 A. That's fine.

9 Q. -- to make sure I get the answer  
10 first.

11 A. Please do. If you don't cut me off, I  
12 won't know when to stop.

13 Q. Should students with disabilities have  
14 the opportunity to eat in the cafeteria, for  
15 example, with nondisabled peers if they're able  
16 to and would benefits from doing so?

17 A. If they're able to and they would  
18 benefit. Yes.

19 Q. Thank you.

20 And should students with disabilities  
21 have the opportunity to participate in  
22 extracurricular activities with nondisabled  
23 peers if they are able to and would benefit from  
24 doing so?

25 A. Yes, and they would want to. Correct.

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1 Q. Thank you.

2 Do you agree that the availability of  
3 appropriate services and supports can in some  
4 cases determine whether a student with  
5 disabilities is able to be served in the most  
6 integrated environment appropriate to their  
7 needs?

8 MS. JOHNSON: Object to form.

9 A. Can in some cases. That's -- in some  
10 case is the individualized part for sure.

11 Q. So, for example, if there are  
12 insufficient community-based services with a  
13 general education school, could an IEP team  
14 determine that a child must go to a more  
15 restrictive setting due to that lack of  
16 services?

17 MS. JOHNSON: Object to form.

18 A. There are requirements for an IEP team  
19 to develop that IEP, and that happens first.  
20 And there are things like related services, for  
21 example, that can be include in that. And  
22 then -- ask your question one more time, Matt.  
23 I'm sorry.

24 Q. No. No. You're fine.

25 Could the lack of availability of



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1 supports and services result in an IEP team  
2 placing a student in a more restrictive setting?

3 A. Legally?

4 MS. JOHNSON: Object to form.

5 Q. Not legally, just your experience --

6 A. Okay.

7 Q. -- as an expert?

8 A. No, that's not the way it's supposed  
9 to work. So, you know, the IEP is supposed to  
10 address all of the students' needs, not based on  
11 their disability. Right.

12 And there has to be a judgment  
13 about -- by the IEP team about which services  
14 are required to identify which of the priority  
15 needs. And then to decide what is the  
16 educational placement.

17 And I think that same determination  
18 would have to be made related to participation  
19 in things like specials and extracurricular  
20 activities. The IEP team is the one that would  
21 make that determination. Sometimes with the  
22 input from the child, but certainly from the  
23 parents. Go ahead.

24 Q. No. No. I'm trying to understand.

25 If an IEP team determines that a

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1 student has a need for some support or service  
2 that is not available at that school or  
3 location, could that not result in the student  
4 being placed in a more restrictive setting?

5 MS. JOHNSON: Object to form.

6 A. Again I think -- it might depend to  
7 some degree on the service that you're talking  
8 about. I also think that you're getting into  
9 some areas that have to do with the law.

10 My practitioner, kind of my person  
11 type understanding of the law is that if the IEP  
12 team identifies that a service is needed, then  
13 it has to be provided.

14 Now, there are some services that are  
15 going to be best provided for a variety of  
16 reasons in a more specialized setting.

17 But -- let me take a really mundane  
18 example where we say oh, you know, we have a  
19 student who has a visual impairment and they  
20 need Braille or books on tape. A school cannot  
21 say "Books on tape, we don't have them here.  
22 You have to go to the school for the blind." In  
23 that sense that -- that's true.

24 But the reason why I'm saying that is  
25 that the detail is important about what service

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1 it is to understand, how to think about your  
2 question.

3 Q. But, I guess, looking at the  
4 practicality if there's -- if there is no  
5 alternative in the general education setting,  
6 would you agree, then, that the IEP team's  
7 choice is really limited as to whether to keep a  
8 student in a general education setting or  
9 sending them to a more restrictive setting?

10 MS. JOHNSON: Object to form.

11 A. I'm only having difficulty out of a  
12 very specific context.

13 That is one of the reasons why, for  
14 example, a special school -- let me use the  
15 example of, you know, where I taught.

16 We had our own specials. We had our  
17 on music. We had our own PE. And they were  
18 trained -- special educators were also provided  
19 PE. In that sense we did draw kids from, right,  
20 on the continuum, and it was an optimal way to  
21 provide those services to those kids. So that  
22 is part of what happens. Right.

23 You know, and if you even use an  
24 example that may be more directly related to the  
25 case -- and, again, you may get into more

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1 specifics about -- but if you need people who  
2 function as a behavior specialist, and right now  
3 if it's tough to get enough for the specialized  
4 programs in GNETS, you can imagine how we're  
5 going to have one per every general ed school  
6 that's out there. Right. I'm just using a  
7 very ...

8 But my point is that you have to  
9 implement the IEP. You can't -- there are  
10 certain things that you can't just say that  
11 doesn't exist. It is true that the limit is --  
12 it's not the sky's the limit, right, because the  
13 legal concept -- however, the school's able to  
14 say we have a continuum of ways to deliver those  
15 services. And one may be the special settings.

16 That's everywhere. Right. That's  
17 every state and that's part of the law.

18 Q. You said that they have to implement  
19 the IEP. Right.

20 But what I'm saying is that if the  
21 capacity of the general ed setting is limited in  
22 how much it can implement from students' IEPs,  
23 could that not result in students being placed  
24 in more restrictive settings?

25 MS. JOHNSON: Object to form.

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1           A.           And I think you're describing exactly  
2 what's required of -- for LRE, which is we will  
3 try to implement the services and supports that  
4 the student needs, but if it's not something  
5 that can be implemented in general ed, we have  
6 this continuum of options.

7           Q.           And I think maybe the daylight between  
8 what I'm asking and what you're saying is it's  
9 not about just what can be implemented but what  
10 is actually implemented by the less restrictive  
11 environment, correct?

12          A.           It's not just what can be --

13          Q.           So, for example let's say that there's  
14 a student who their IEP determines they need  
15 one-on-one aide.

16          A.           Okay.

17          Q.           And for whatever reason the general  
18 education requirement cannot or does not provide  
19 that. Could that not result in the IEP placing  
20 that student in a more restrictive setting than  
21 that student needs if that more restrictive  
22 setting has a one-on-one aide?

23          A.           Uh-huh. That example's okay, and I do  
24 think that there aren't many schools that that  
25 would be considered acceptable. They would say

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1 you can provide an aide in a general ed  
2 classroom.

3 To me what's more challenging, just  
4 because we've got this sort of broad category,  
5 is -- let's say it's an individualized behavior  
6 plan, and we say okay, this has to be  
7 implemented in a least restrictive setting and  
8 we can't consider a more restrictive setting.

9 Now, that capacity of general ed --  
10 that's the term that you're using for a lot of  
11 the things that I put in the report -- can be  
12 limited. You can have people that don't have  
13 the training. It can be just hard to implement  
14 it with 30 other kids.

15 You know, the other thing about  
16 behavior intervention plans is -- I think  
17 there's a misconception that you just give it to  
18 them and things are solved. Right. Usually  
19 these kids have lifelong developmental  
20 disabilities that require continuous problem  
21 solving.

22 So that example to me is just the one  
23 that I would want to consider in giving my  
24 answer. Okay. We do want to say that we need  
25 to provide the student some interventions.

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1 But what can general ed implement?  
2 It's not unlimited. And so it may be that we  
3 have to consider a more specialized setting that  
4 has more capacity or the conditions that make  
5 implementation possible, appropriate, and  
6 effective.

7 And the appropriate also has to do  
8 with the student's dignity. And I did mention  
9 and you're aware, but, you know, we do have to  
10 consider the impact on other kids as well,  
11 right, when we say is this an appropriate  
12 setting.

13 So I get the aide example. To me I  
14 would think that a school would have a much  
15 harder time saying we only have aides in this  
16 special school.

17 But if we were to say oh, this kid  
18 needs individualized behavior supports,  
19 sometimes that's going to work out in general ed  
20 but sometimes it's not. And it's not because  
21 they're saying, you know, we don't want to give  
22 this, it's -- only intervention plans are over  
23 there, it's just what that individual student  
24 needs may not -- general ed may not have the  
25 capacity to provide it.

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1 Q. I guess would you agree that the  
2 capacity of a general ed setting to provide  
3 supports and services for students with  
4 disabilities could impact whether or not certain  
5 students with disabilities are able to be  
6 successfully educated in that general education  
7 setting?

8 A. I think I agree with what you're  
9 saying. I'm just putting it in the context of  
10 this is the decision-making process.

11 Q. I hear you.

12 A. Can we serve this kid in general ed or  
13 do we need to consider. And first you have to  
14 figure out what do they need, and then make a  
15 determination of, you know, where those services  
16 most -- are best provided.

17 Q. All right. Before we break, I have  
18 just a couple of -- I said this before.

19 A. That's all right.

20 Q. I have a couple of questions, but  
21 these should be easy. I think.

22 A. Okay.

23 Q. And bear with me.

24 But, Dr. Wiley, you don't endorse the  
25 use of facilities for students with disabilities



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1 that are of inferior condition to those used by  
2 general education students, correct?

3 MS. JOHNSON: Object to form.

4 A. Are you talking about, like, physical  
5 conditions?

6 Q. Yes.

7 A. Again, I would expect any school to  
8 have some basic safety, cleanliness, that kind  
9 of stuff, yeah.

10 Q. But -- sorry. My question is slightly  
11 different than that.

12 You don't support -- you don't endorse  
13 the use of facilities for students with  
14 disabilities that are inferior to the quality of  
15 facilities used by general education students,  
16 correct?

17 MS. JOHNSON: Object to form.

18 A. I don't mean to treat it like a trap.  
19 It's not. But my point is that I endorse the  
20 use of special schools and I think those special  
21 schools should have clean, safe facilities.

22 But I would never say oh, we got to  
23 put all of these kids in general ed because  
24 their facilities are better than their  
25 facilities.

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1           The condition of the facilities  
2       matter. I am absolutely saying that. But I'm  
3       careful because I feel like you're saying oh, if  
4       the conditions of these schools are inferior,  
5       then all kids then have to go to the school with  
6       the better facility. To me, fix that school.

7           So you may not have meant it that way,  
8       but I just want to make sure I'm giving my  
9       opinion as accurately as I can.

10       Q.       And I appreciate --

11       A.       Yeah.

12       Q.       -- that.

13       A.       Okay.

14       Q.       I really intend for these to be some  
15       of the easiest questions of the day. So that's  
16       where I'm approaching --

17       A.       Uh-oh. I'm just kidding.

18       Q.       So you don't endorse the use of --  
19       and, again, there's not an implication here that  
20       I'm trying to make in this question to other  
21       ramifications.

22       A.       Okay.

23       Q.       I'm just -- at face value you don't  
24       endorse the use of under or unqualified  
25       instructional or behavioral staff for students

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1 with disabilities, correct?

2 A. I don't --

3 MS. JOHNSON: Object to form.

4 A. -- endorse that. Unfortunately  
5 underqualified is, again, you know -- but, no, I  
6 think that they should be trained to provide the  
7 services that the kids require.

8 Q. And you don't endorse unnecessarily  
9 restricting the access of students with  
10 disabilities to educational resources, programs,  
11 or activities enjoyed by general education  
12 peers, correct?

13 A. I do not endorse unnecessarily. Yes.

14 Q. All right.

15 MR. GILLESPIE: That's a good time  
16 to stop.

17 THE WITNESS: All right.  
18 Thank you.

19 THE VIDEOGRAPHER: Okay. Off the  
20 record, 12:44.

21 - - - - -

22 (A recess was taken.)

23 - - - - -

24 THE VIDEOGRAPHER: On the record,  
25 1:31.

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1 MR. GILLESPIE: Thank you.

2 All right.

3 - - - - -

4 (Deposition Exhibit 983, Response to  
5 U.S. Department of Justice Expert  
6 Reports of Dr. Amy McCart and Dr. Robert  
7 Putnam, Rebuttal Expert Report Prepared  
8 by Andrew Wiley, Ph.D., September 1,  
9 2023, was marked for identification  
10 purposes.)

11 - - - - -

12 BY MR. GILLESPIE:

13 Q. Dr. Wiley, I'm going to hand you  
14 what's been marked as Exhibit 983.

15 A. Okay.

16 Q. Do you recognize that?

17 A. Yes.

18 Q. And is that your expert report, your  
19 rebuttal report, for this matter?

20 A. It is, yes.

21 Q. Dr. Wiley, let's start at the  
22 beginning. That's the best place.

23 A. Right.

24 Q. Page 2.

25 And here I'm going on to page 3. You

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1 identified eight quotes -- excuse me -- taken  
2 from the reports of Drs. Putnam and McCart,  
3 correct?

4 A. Yes.

5 Q. And how were these quotes in  
6 particular identified?

7 A. I think that they were what I viewed  
8 as sort of the primary claims or the most  
9 consequential claims or conclusions of the  
10 experts and I wanted to include them.

11 I think I -- my effort was to rebut  
12 these claims in particular. I may have gone a  
13 little bit around them a bit, but that's what  
14 they are. They're all meant to be -- and the  
15 way that I thought about these quotes is I sort  
16 of rephrased first, and then I took direct  
17 quotes that I think captured what I thought were  
18 the main conclusions of the experts.

19 Q. When you say you rephrased or reframed  
20 first --

21 A. Just thought about it in my head.  
22 Like what are the core. And then I think these  
23 quotes reflect the main things that I wanted to  
24 rebut.

25 Q. Okay. So you cut through a couple of

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1 my questions right off the bat.

2 A. Oh. I'm sorry. Or you're welcome.

3 Q. No. That's a good thing.

4 So we're going to dive down into  
5 everything in more detail, but let's just start  
6 by talking through some of these quotes if we  
7 can.

8 A. Okay.

9 Q. So we'll start with the first one.

10 So you wrote the vast majority of --  
11 or you quoted Dr. McCart, who wrote "The vast  
12 majority of students in the GNETS program can  
13 and should be served in integrated settings with  
14 appropriate services and supports, where they  
15 are more likely to experience social, emotional,  
16 behavioral, and academic success."

17 Did I read that correctly?

18 A. Yes.

19 Q. And I just want to be sure I  
20 understand. Your critique applied to GNETS  
21 specifically -- or I'll just ask.

22 You're not disagreeing with  
23 Dr. McCart's conclusions as to GNETS  
24 specifically, correct?

25 MS. JOHNSON: Object to form.

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1 A. Because the students in the GNETS  
2 program were not sort of individually described,  
3 then my rebuttal applies to what I think she's  
4 saying about the GNETS program being students  
5 with behavior-related disabilities.

6 So I think my rebuttal applies to the  
7 GNETS program based on what Dr. McCart did or  
8 didn't provide. But it's also more generally to  
9 students with behavior-related disabilities.

10 Q. So your rebuttal applies to -- well,  
11 let me keep focus on -- your rebuttal to this  
12 quote applies to GNETS, insofar as it applies to  
13 students with behavior-related disabilities  
14 generally, and those are some of the students  
15 that are in GNETS. Is that an accurate --

16 A. Correct.

17 Q. -- paraphrase?

18 A. Yes.

19 Q. So in the next quote you wrote -- or  
20 you quoted Dr. Putnam, who wrote "Researchers,  
21 service providers, and educators have coalesced  
22 around a core set of interventions -- including  
23 functional behavior assessments and behavioral  
24 intervention plans, wraparound services, family  
25 and community support, and individual and group

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1 therapy -- that are effective in supporting  
2 students with behavior-related disabilities in  
3 more integrated settings."

4 I just wanted to ask what are the  
5 interventions that you would identify as being  
6 effective in supporting students with  
7 behavior-related disabilities?

8 A. I think that what I'm rebutting here  
9 is that I understood the statement to mean that  
10 these services -- again, he didn't use the term  
11 "vast majority."

12 But I think because I identified the  
13 practices that Dr. Putnam names here as  
14 promising practices, I would say that means two  
15 things.

16 One is when we implement them well,  
17 they can serve many, but not all, students with  
18 behavior-related disabilities.

19 And then what I add to Dr. Putnam's  
20 list in terms of -- in some ways functional  
21 behavior assessment and behavior intervention  
22 plans, that's pretty specific.

23 Wraparound services is a model. You  
24 know, so like PBIS, it's more like a  
25 conceptional framework than it is one practice,



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1 right.

2 Family and community support to me is  
3 pretty broad.

4 And I understood and I think  
5 Dr. Putnam made -- individual and group therapy.  
6 He mentioned things like social skills  
7 instruction. He might have mentioned things  
8 like cognitive behavior therapy. This is  
9 another one where it depends specifically about  
10 on what you're talking about.

11 And, again, what I tried to say in my  
12 report is that the evidence, again, it's  
13 promising. So it's mixed. And also we  
14 shouldn't assume that they're going to be  
15 effective in the vast majority of cases.

16 So when I was looking at research on  
17 these practices, especially ones that are meant  
18 to make integrated settings effective for kids  
19 with behavior-related disabilities, I was  
20 looking at limitations of evidence and  
21 limitations of implementation.

22 These I would agree with being  
23 promising practices.

24 Q. Okay. And so if I understand this  
25 correctly, there are two aspects to what you're

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1 disagreeing with here.

2 One is you'd rather characterize these  
3 as promising practices because the research is  
4 imperfect or incomplete; is that right?

5 A. Yeah. I think that that's fair.

6 And so, like, in this specific  
7 statement what I'm trying to say is a  
8 categorical statement that they're effective in  
9 supporting students with behavior-related  
10 disabilities requires some context.

11 And that context is that not only is  
12 it incomplete in terms of both effectiveness and  
13 implementation, but in some cases we can see  
14 that, you know, even the best research we have,  
15 it's not always effective.

16 Q. And that's part two, right, --

17 A. Yeah.

18 Q. -- is that you want to highlight that  
19 these services aren't effective for everyone  
20 100 percent of the time, --

21 A. All the time, --

22 Q. -- correct?

23 A. -- yeah. That's right.

24 Q. Okay.

25 A. That's right.

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1 Q. But you're not saying that you don't  
2 think that these are helpful tools or that they  
3 can't be used in a way that helps to serve  
4 students with behavior-related disabilities; is  
5 that right?

6 A. So I would speak to, first, functional  
7 behavior assessment and behavior interventions,  
8 because I'm more familiar with that and that's  
9 more specific. In which case I would say yes,  
10 that can be helpful for many kids in different  
11 settings.

12 Wraparound services. Again, that's  
13 kind of a broad term, but there are services  
14 that can be provided in the community that can  
15 help.

16 Family and community support to me is  
17 too broad to respond to.

18 And I really focused on -- individual  
19 and group therapy, I used the example of social  
20 skills intervention. It's one that's mentioned  
21 both in the context of the case and the expert  
22 reports.

23 But there are others. Right. So  
24 there are ones that are packaged, like curricula  
25 essentially, including some cognitive behavioral

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1 therapy. And then there are some that are more  
2 just like a model, like social skills  
3 instruction.

4 So these are ones that I think, based  
5 on the best available evidence, we would suggest  
6 schools ought to start with.

7 Q. Okay. Thank you. That's really  
8 helpful.

9 All right. Just going to the next  
10 quote. Dr. Putnam wrote "The vast majority of  
11 students with behavior-related disabilities,  
12 including students at serious risk of  
13 restrictive educational placement, can be served  
14 effectively in general education schools within  
15 their communities."

16 And, Dr. Wiley, you agree that some  
17 students with behavior-related disabilities can  
18 be served successfully in general education  
19 settings, correct?

20 A. Some students with behavior related --  
21 yes.

22 Q. And I'm assuming you disagree with the  
23 characterization of the vast majority. Is that  
24 right?

25 A. Well, -- and Dr. Putnam here gets more

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1 specific and talks about students at serious  
2 risk of restrictive --

3 Q. I'm so sorry.

4 A. Yeah. Yeah.

5 Q. I just -- like I said before, I want  
6 to hear the context of your answer, --

7 A. Okay.

8 Q. -- but first I want to focus on the  
9 direct answer to my question first.

10 A. So ask it one more time.

11 Q. You're fine.

12 So my question is, am I correct that  
13 you disagree with the characterization of "the  
14 vast majority"?

15 A. Yes, on two counts.

16 One is that it sounds like they're  
17 saying -- I mean, it's not a very specific  
18 number.

19 And, again, it's the wrong way to  
20 think about special education, because we're  
21 individual by individual. And so nobody ever  
22 clarifies at an individual or just a  
23 conceptional level what does "vast majority"  
24 mean. And so in that sense I think I was trying  
25 to point out that there are problems with this

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1 kind of statement.

2 Q. So you don't disagree necessarily with  
3 the conclusion that -- you disagree with a  
4 process followed to get to that conclusion,  
5 correct?

6 MS. JOHNSON: Object to form.

7 A. If the conclusion -- if I'm cutting  
8 out the context of the middle phrasing. "The  
9 vast majority of students with behavior-related  
10 disabilities can be served effectively in  
11 general ed." I disagree with that, and I don't  
12 think we have good evidence that that's true.

13 To be honest, I think we're struggling  
14 with the kids that are currently placed in  
15 general education. I mean, there's work to be  
16 done there to better support them.

17 So if it were just to be that and just  
18 to say of all of the kids with behavior-related  
19 disabilities, that's a statement that I would  
20 say is not supported by our best available  
21 evidence.

22 If you put an actual number on it, it  
23 would still make it weird. But, I mean, like,  
24 what does vast majority mean. But I -- even if  
25 I just let that slide, no, I don't think that

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1 that's an accurate characterization of where we  
2 are.

3 Q. What if it just said "majority"?  
4 Would you have the same objections?

5 A. Again, it's just a weird comment  
6 because we're looking at kid by kid.

7 I will say it this way. I am all in  
8 favor of trying to make general education more  
9 responsive to kids with behavior-related  
10 disabilities, but we can't put the cart before  
11 the horse. We need to figure out how to do that  
12 before we talk about the majority or what  
13 percentage could be served in general ed  
14 environments.

15 Q. So --

16 A. Schools.

17 Q. -- when you say that you're in favor  
18 of trying to make general education more  
19 responsive to kids with behavior-related  
20 disabilities, can you tell me, what do you mean  
21 by that?

22 A. I mean, it would be great if we knew  
23 how to provide more promising practices in  
24 general education than we do now.

25 So I'm all for solving the

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1 implementation problems. I'm all for -- if  
2 there's mixed evidence about the effectiveness  
3 of something like functional behavior  
4 assessment, well, let's figure out how to make  
5 it better and make it more effective for more  
6 kids. I think that when you focus on individual  
7 kids and you focus first on their services, many  
8 of the other things will come. Right.

9 So there is a presumption in the law,  
10 and I think it's right, that kids will be, to  
11 the extent appropriate, served in general ed.

12 The way that we get there is by  
13 figuring out how to do it first. Figuring out  
14 what schools needs, what are the conditions  
15 required in order for them to implement them,  
16 and then we can talk about how many kids can be  
17 appropriately included in general ed.

18 Q. Thank you. That's helpful.

19 A. Okay.

20 Q. We'll put a pin on that for now.

21 A. All right.

22 Q. And I want to move to the next quote  
23 here.

24 All right. The next quote was from  
25 Dr. Putnam. "The consensus among professionals



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1 who work with students with behavior-related  
2 disabilities -- including myself -- is that in  
3 most cases they can be served in integrated  
4 settings in their home schools and attend class  
5 with general education students, provided they  
6 receive the proper supports."

7 Now, Dr. Wiley, you agree that some  
8 students with behavior-related disabilities can  
9 be served in integrated settings in their home  
10 schools and attend class with general education  
11 students provided they receive proper supports,  
12 correct?

13 A. Yes.

14 Q. And so again is your concern with this  
15 statement the use of the word "most"?

16 A. That's part of it.

17 The other concern with a statement  
18 like this is -- and I don't -- I don't know  
19 Latin. I don't know if this is the right term.  
20 But it's sort of tonological where it says they  
21 can be served appropriately in general ed if  
22 they receive proper services.

23 And, you know -- so proper becomes by  
24 definition they achieve FAPE and meaningful  
25 progress based on their services.

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1                   So I think the way that I would unpack  
2                   that a little bit is also at the proper  
3                   supports, because then we need to identify  
4                   practices that we know are generally effective  
5                   with most students with behavior-related  
6                   disabilities and we know how to implement them  
7                   in general education. And my rebuttal is that I  
8                   disagree that that's a consensus.

9           Q.           Dr. Wiley, do you agree that ...

10                   If I'm understanding you correctly,  
11                   part of your objection here is that -- are what  
12                   you understand to be statements that are saying  
13                   that these supports and services can and will  
14                   work in general education settings for students  
15                   with behavior-related disabilities, and you  
16                   disagree with that, correct?

17           A.           Well, I think I just disagree because  
18                   the specifics aren't provided. If you're asking  
19                   me whether I think that it's possible in some  
20                   cases to implement these practices in such a way  
21                   that they're effective for some kids with  
22                   behavior-related disabilities, yes, I think that  
23                   we know enough to say that's possible.

24                   But we also, especially at the  
25                   individualized planning process, have to be

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1 mindful that there are limitations.

2 And so when a student -- when an IEP  
3 team determines that a separate placement is  
4 most appropriate, it's not because they're  
5 disregarding what we know and what we already  
6 know how to do. Those are real limitations.

7 Q. But, to your point, Dr. Wiley, what  
8 you should look at first is the individual  
9 student's IEP to determine what they need before  
10 you figure out placement? That's your position,  
11 correct?

12 A. That is correct.

13 Q. Okay.

14 A. And if it helps, the example that we  
15 used earlier in our conversation was behavior  
16 intervention plans. And so you say to yourself  
17 can behavior intervention plans effectively  
18 support a student with behavior-related  
19 disabilities.

20 Well, that's true, but it all will  
21 depend on the nature of the student's  
22 difficulties, the complexity of the behavior  
23 plan, and also the various constraints of that  
24 particular general ed classroom.

25 And so I think when you don't specify

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1 certain terms and you don't qualify, that this  
2 statement is not accurate. And that's kind of  
3 what I'm trying to rebut, is that there -- there  
4 needs to be more context and more specificity  
5 about what we're talking about.

6 Q. But would you agree that if a  
7 student's IEP, inclusive of any particular BIP,  
8 does not require any set of supports or services  
9 that can only be effectively given in a  
10 separate -- or specialized environment that that  
11 student should remain in a more integrated  
12 environment?

13 A. If they can be appropriately taught  
14 with services and supports, that's the general  
15 language of the law, right, then yes. That's  
16 what the law requires, and also I think that  
17 that's a good thing.

18 Now, judgments have to be made about,  
19 you know, which services and supports to  
20 provide. They need to be made about how much  
21 progress does this student have to make. And I  
22 think that that really comes down to an IEP team  
23 looking at that student and knowing individually  
24 that student in the context in which they're  
25 trying to provide the IEP.

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1 Q. Thank you.

2 A. It's -- a lot of it depends. And I  
3 know that it's -- it runs counter to sort of  
4 categorical statements, but I think it's the  
5 nature of special education, that there's a lot  
6 of if -- you know, it depends on sort of  
7 contextual things to consider. Even when you're  
8 just trying to say what is the consensus of the  
9 field. I think more people would say well, it's  
10 not quite that clear-cut.

11 Q. Thank you.

12 A. Uh-huh.

13 Q. I'm going to skip the quote that  
14 begins with "The GNETS program."

15 A. Okay.

16 Q. Go to the beginning of the top of  
17 page 3. The quote there reads "The therapeutic  
18 services and supports that help students remain  
19 in more integrated educational settings are well  
20 established, as are the frameworks for  
21 implementing and sustaining those services at  
22 the system level."

23 And based on our conversation, Doctor,  
24 my understanding is your disagreement here is  
25 based on your understanding of the status and

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1 strength of the research at this point in time.

2 Correct?

3 A. Yeah. And in this specific case --  
4 again, when you talk about frameworks -- and an  
5 example, you could talk about the ISF. I can't  
6 remember the one because I'm not -- but let's do  
7 PBIS because we've been talking about it.

8 There's a lot to break down in there  
9 in terms of there's tier one, there's tier two,  
10 there's tier three. Really where I would  
11 probably quibble most with this and what I'm  
12 trying to say is in the implementing and  
13 sustaining.

14 I think that there is good research  
15 that many, but not all, kids can be helped with  
16 a really well implemented three tiered system of  
17 multitiered systems of support. I think most of  
18 the problems here fall in the implementation and  
19 sustaining of those services.

20 And I think that, again, it's  
21 promising. I hope more work is done. But I  
22 think that the field's -- and I say this --  
23 enthusiasm has gotten a little bit ahead of the  
24 problems involved with implementing it.

25 You know, what is the level of

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1 training required. How many specialized  
2 personnel do you need to have involved. What  
3 resources do you need. I mean, there's a lot  
4 that goes into it in order to get to that point.

5 And there is research, including the  
6 national PBIS data, that says implementation is  
7 not quite where we want it to be. And  
8 particularly at tier two and tier three, which  
9 is where we're mostly focused when we're talking  
10 about kids with behavior-related disabilities.

11 So -- I just realized I'm talking too  
12 fast.

13 Implementing and sustaining would be  
14 part of what I would highlight from that, where  
15 I would say do we really have solid knowledge  
16 where tomorrow we could go out, put these things  
17 in place if we just had a little bit of training  
18 and a little bit of motivation.

19 And I disagree with that statement.

20 Q. Okay. Thank you. That's helpful.

21 Moving on to the next quote.

22 Dr. Putnam wrote "The unnecessary segregation of  
23 students with disabilities leads to serious  
24 problems that are well documented in the  
25 research literature."

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1                   And am I correct that by listing this  
2                   statement, you are preemptively disputing  
3                   whether segregation's unnecessary? Is that the  
4                   disagreement?

5           A.           Well, what I would disagree with there  
6                   is first, you know, I don't like the word  
7                   "segregation." But I think what's being said  
8                   here is that teaching students in separate  
9                   environments leads to serious problems that are  
10                  well documented in the research literature.

11                   Again, I think Dr. Putnam only cites  
12                  one study of six self-contained classrooms here  
13                  as the well established, and I don't think that  
14                  that's great.

15                   I focus more on the placement  
16                  research, which you saw in my report, which says  
17                  hey, we can compare these outcomes between kids  
18                  more in general ed and more in -- more separate  
19                  placements. And that research is inconclusive  
20                  and really flawed.

21                   I think under certain circumstances  
22                  students served in separate schools can do way  
23                  better than they would do in a general ed  
24                  school. And we have to figure out how to  
25                  provide IEPs that are as effective as possible



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1 across the whole continuum, from general ed to  
2 special ed.

3 Q. So is it your opinion that the --  
4 well, actually, I'm going to break this down  
5 into a couple of different steps here.

6 A. Sure.

7 Q. So do you agree that unnecessary  
8 segregation of students with disabilities leads  
9 to serious problems for the students?

10 MS. JOHNSON: Object to form.

11 A. Again I don't know what is meant by  
12 "unnecessary."

13 Q. I -- I'm sorry.

14 A. It's okay.

15 Q. I want to cut off because I -- I'm  
16 just asking you, you know, like, related to  
17 this, but mostly separate from this now.

18 A. Okay.

19 Q. Not reading -- trying to read  
20 Dr. Putnam's mind.

21 A. Okay.

22 Q. I'm asking you, Dr. Wiley, the expert.  
23 Do you agree that unnecessary  
24 segregation of students with disabilities leads  
25 to serious problems?

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1 A. Well, --

2 MS. JOHNSON: Object to form.

3 A. So if students are placed in separate  
4 settings when they really shouldn't be, I don't  
5 know the research that shows what problems those  
6 actually lead to. And I don't think Dr. Putnam  
7 cites anything to say, first of all, -- so what  
8 would be required in the research would be to  
9 identify here kids are placed. Let's look at  
10 them individually and let's make the case that,  
11 oh, this kid clearly could have been served in  
12 general education.

13 And then you have to say all right.  
14 So what outcomes do they experience when this  
15 occurs.

16 There is sort of a parallel thing  
17 around special ed. I mean, there is concern  
18 about unnecessarily placing kids in special ed.  
19 Probably don't want to go there because that's a  
20 whole big -- maybe we will later. I don't know.

21 But it also -- that also depends on  
22 what's happening in that separate placement. I  
23 mean -- so, in special ed, if special ed is  
24 considered to be uniformly sort of a helpful  
25 thing, then most people don't go, you know, "Oh,

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1 we got to keep kids out of there under all  
2 circumstances."

3 I would say the same thing would  
4 happen with special schools. You know, we want  
5 to say special schools, it's a good thing. It  
6 doesn't lead to serious bad outcomes if the  
7 students are receiving some sort of beneficial  
8 service.

9 Q. Again I appreciate that context, but I  
10 really want to focus in on whether or not you  
11 agree that unnecessary segregation -- and, you  
12 know, we can go back to our conversation earlier  
13 if a student could be as or more successful in  
14 an inclusive or integrated general ed setting.

15 But do you agree that the unnecessary  
16 segregation of students with disabilities leads  
17 to serious problems for that student or could  
18 lead to serious problems for that student?

19 MS. JOHNSON: Object to form.

20 A. Yeah, and I'm really not being  
21 difficult, but it depends. I think of the  
22 example of the school that I worked at. If  
23 there was a student who came to my school, they  
24 probably would do really well, given the  
25 services that we provided them.

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1                   So -- but let me take the terms at  
2                   their face value and say this kid should have  
3                   been taught in general ed. It was unnecessary  
4                   that they were placed in a special setting.

5                   I will speculate that it would lead  
6                   to -- it could lead to serious problems. How  
7                   about that? I agree with that. It could.

8                   But, again, I disagree with the  
9                   statement, because I think it's not clear about  
10                  what is meant by a necessary segregation. And I  
11                  don't -- and, again, usually I would say if  
12                  somebody's making a statement like this that  
13                  they would provide the research that shows here  
14                  are the outcomes that we have documented. It  
15                  says well -- does it say -- yeah, "well  
16                  documented."

17                  And I would say where have we  
18                  identified the kids who were unnecessarily  
19                  placed and what are the problems that we've  
20                  documented. That's all.

21           Q.           Thank you.

22           A.           Uh-huh.

23           Q.           Moving on to the next quote.

24                  Dr. McCart wrote that "The GNETS  
25                  program unnecessarily segregates students with

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1 behavior-related disabilities, provides them  
2 unfair and unequal educational opportunities,  
3 and causes them harm (in many case  
4 irreparable)."

5 And again am I understanding your  
6 disagreement to be more as it applies to  
7 specialized settings generally?

8 A. That's a big part of it.

9 I did read the findings of  
10 Dr. McCart's report. And the thing that I also  
11 question, although I didn't get real far into it  
12 in the report, is that she created some tables  
13 indicating her definitions of segregated. I  
14 don't know where they came from.

15 And usually when we're saying hey,  
16 let's evaluate something, you need to have a  
17 reliable and valid measure of that thing. So  
18 I'm like -- in my mind it doesn't -- it's not a  
19 reliable and valid way to document what is or is  
20 not happening anywhere.

21 And then she provides her conclusions  
22 that to me -- because I don't know how she got  
23 there, I don't know that it's right to say that  
24 the GNETS program provides unfair and unequal  
25 opportunities and causes them harm. I think

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1 that she's stating something that she doesn't  
2 provide enough support for.

3 Q. Thank you.

4 All right. Now looking at this next  
5 section here, also on page 3.

6 A. Okay.

7 Q. You provide summaries of the five  
8 major opinions of your report, correct?

9 A. Uh-huh.

10 Q. And what was your process for  
11 identifying these five focus areas of your  
12 report?

13 A. Well, reading the reports and reading  
14 the claims that were made -- and a lot of them,  
15 again, have been made by sometimes very  
16 prominent people in special education -- so  
17 a lot of my scholarship is around inclusion in  
18 kids with emotional, behavioral disorders.

19 And so when I read what the claims  
20 were, I sort of laid out what I thought were the  
21 most important ways to rebut what those  
22 conclusions were.

23 And so the first one -- even though,  
24 you know, my expertise is not specifically the  
25 law, you know, I was trying to understand from

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1 my training in IDEA what -- how to reconcile  
2 that with the requirements of the ADA. So that  
3 was the first section.

4 And I think it's important because  
5 unnecessary segregation inevitably relates to,  
6 from an IDEA perspective, how are decisions made  
7 about the LRE for an individual student.

8 So, as -- I thought about what was  
9 being said, what was being included. That was  
10 my first section.

11 Do you want me to walk through all of  
12 them, or?

13 Q. Well, you know what, we were about to  
14 do that.

15 A. Okay.

16 Q. So let's do it step-by-step. And you  
17 just very helpfully began talking about the  
18 first section. So let's start there.

19 And, Dr. Wiley, you're not a licensed  
20 attorney, correct?

21 A. That's correct.

22 Q. And you have no formal legal training?

23 A. That is correct.

24 Q. And are you familiar outside of this  
25 with the Americans with Disabilities Act?

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1           A.           At a very introductory level. In our  
2 introduction to exceptionalities course, for  
3 example, most of the textbooks have a chapter  
4 that's -- has ADA and 504.

5                       Because from a historical perspective  
6 it's import to understand all of these different  
7 laws. And then of course IDEA gets sort of the  
8 heaviest treatment because it's the one that we  
9 think about as applying to special education  
10 most directly.

11          Q.           But you don't purport to be an  
12 expert --

13          A.           No.

14          Q.           -- in the legal application of the  
15 ADA, correct?

16          A.           Of the ADA, no.

17          Q.           And in section I of your report, you  
18 provide your analysis as to how the requirements  
19 of the ADA and IDEA should be understood,  
20 correct?

21          A.           Uh-huh. As I understand them, yeah.  
22 And I think my understanding of IDEA is deeper.  
23 Again, I don't claim to be a special ed law  
24 expert, but all of our preservice teachers have  
25 to be trained in the requirements of IDEA; what



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1 they are, why they are what they are.

2 And so in that sense I think I know  
3 more about IDEA than I do about ADA.

4 Q. If I reference Olmstead in the context  
5 of the ADA, do you know what that means?

6 A. I know that -- I know that from  
7 reading the materials -- and I hadn't studied  
8 Olmstead, but my understanding is it was a case  
9 that said something about people with  
10 disabilities should be integrated, to the extent  
11 appropriate, if that's what they want.

12 So I think it was a ruling. I don't  
13 know what the legal terms are. But basically it  
14 said in community services and programs and  
15 things like that, they should be provided in the  
16 most integrated setting appropriate basically.

17 That is Olmstead, right? Did I get it  
18 sort of right?

19 Q. The questions only go one way  
20 unfortunately.

21 A. Got it. Got it.

22 Q. So, Dr. Wiley, I'm actually going to  
23 direct your attention to the top of the next  
24 page. And you can orient yourself if you want.  
25 I'm talking about bullet II of your summaries.

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1 A. Page 4?

2 Q. Yeah.

3 A. Okay.

4 Q. At the top of page 4.

5 A. Got it.

6 Q. And just the line here you include  
7 that says "DOJ's experts did not examine  
8 individual students' needs."

9 Do you see that?

10 A. Yes.

11 Q. What is this statement based on?

12 A. The fact that I didn't see examples of  
13 individual students who the DOJ was claiming  
14 could be served in general ed environments.

15 Q. Are you aware if either expert for the  
16 United States reviewed and considered student  
17 specific records?

18 A. I saw that there was review of  
19 records. I think that was reported as part of  
20 the method for both of those experts.

21 Q. But you didn't take a look at what  
22 records were reviewed to see what the scope of  
23 the evaluation was, correct?

24 A. I didn't. I looked at the conclusions  
25 based on those reviews, and I didn't see where

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1 the experts use those reviews to say here are  
2 example of students that we're talking about.

3 Q. This first sentence in paragraph III,  
4 also on page 4, you wrote that "Research does  
5 not show that inclusion (placement in general  
6 education) is categorically more beneficial than  
7 placement in specialized settings (e.g.,  
8 self-contained classrooms, separate school) for  
9 students with behavior-related disabilities."

10 Did I read that correctly?

11 A. Yes.

12 Q. Would you agree that research does  
13 support placement of students in the least  
14 restrictive environment?

15 A. Which is not always general education.

16 And that's an interesting -- because  
17 the least restrictive environment -- you know,  
18 the problem is the placement research. And so,  
19 actually, I don't know that research would tell  
20 us that the placement -- least restrictive  
21 environment. That's more like a principle of  
22 IDEA that has very good reasons for it.

23 I'm answering honestly, because I  
24 can't think of the research that would say --  
25 the research that would say placement in LRE is

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1 more beneficial. Or is beneficial.

2 That's your question, right?

3 Placement in the LRE is beneficial than not  
4 placement in the LRE maybe. Okay.

5 Q. Thank you.

6 Paragraph V on the same --

7 A. Yes. Yes.

8 Q. You wrote "Separate placements" --  
9 again referring to self-contained classrooms and  
10 separate schools -- "can be more appropriate and  
11 effective than general education for some  
12 students with behavior-related disabilities."

13 And my question here, with this  
14 conclusion here and then further on, do you  
15 purport to speak for a consensus of special  
16 education professionals?

17 A. This is a funny question, because we  
18 don't have, like, a poll, but I think that --  
19 the way that I would characterize it is to say  
20 the mainstream of special education research  
21 would agree with that statement. And I don't  
22 have the survey that says that.

23 What I would say is that there's a  
24 vocal, but not the mainstream of special  
25 education, that argues that separate schools can

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1 be done away with that we can appropriately  
2 serve.

3 And there usually is the qualifier  
4 like there is in, for example, Dr. McCart's  
5 report. I'm not saying all, but the vast  
6 majority.

7 My opinion is that what I have written  
8 there would be the consensus of mainstream  
9 research in special education.

10 Q. Dr. Wiley, let's go to page 14, if we  
11 could.

12 A. 14?

13 Q. Yes, please.

14 Let me know when you're there, please.

15 A. Yes, I'm there.

16 Q. So the first sentence below the table,  
17 you wrote that "IDEA's LRE requirement is  
18 essential because there was a time when many  
19 students with disabilities were unnecessarily  
20 taught in separate settings when they could be  
21 appropriately taught part or full time with  
22 their nondisabled peers."

23 Did I read that correctly?

24 A. Yes.

25 Q. And here your point is that the LRE

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1 requirement was essential because it was  
2 problematic that many students with disabilities  
3 were being unnecessarily taught in separate  
4 settings when they could be appropriately taught  
5 part or full time --

6 A. Right.

7 Q. -- with nondisabled peers, correct?

8 A. Yes.

9 Q. Okay.

10 A. That we should make that decision  
11 individually, rather than just saying all kids  
12 are taught in one place.

13 Q. And why was that problematic?

14 A. Well, there were a couple things that  
15 were problematic before IDEA.

16 And one that's kind of interesting is,  
17 you know, people think of the continuum of  
18 alternative placement as being a basis for  
19 exclusion, but the continuum allowed us to  
20 respond to individual kids.

21 So, for example, I take a state like  
22 Massachusetts, which since the 1950s, and we  
23 would consider it progressive in those days, had  
24 special schools for kids with EBD.

25 And often if you had a student who

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1 could not succeed in general education, their  
2 only other choice was the special school  
3 20 miles down the highway, or whatever it is.

4 The continuum allows you to make  
5 determinations about how can we provide, first  
6 of all, a free and appropriate public education,  
7 but to not separate kids from students without  
8 disabilities any more than might be necessary.

9 And so -- I think we talked a little  
10 bit about this before. I agree with the  
11 presumptive right to be taught with students  
12 with disabilities, but I also agree that it can  
13 be overridden when the student's interest and  
14 their IEP require it.

15 Q. And if this same practice of students  
16 with disabilities being unnecessarily taught in  
17 separate settings were occurring today, it would  
18 be similarly problematic --

19 A. Right.

20 Q. -- for the same reasons, correct?

21 A. Right.

22 Q. Okay. Same page. We're going to go  
23 to the bottom, the second to last sentence.

24 A. Okay.

25 Q. It begins with "This deceleration."

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1 A. Yeah.

2 Q. And you wrote that "This deceleration  
3 in general education placement may reflect the  
4 reality that general education does not have  
5 unlimited capacity to appropriately include all  
6 or the vast majority of students with  
7 disabilities," particularly with those --  
8 "particularly those with the most complex and  
9 intensive needs."

10 Did I read that correctly?

11 A. Yes.

12 Q. And is this statement meant to apply  
13 to all students with disabilities?

14 A. Yes, because the research that I'm  
15 citing applied to all kids with disabilities.

16 And this is a potential way of  
17 interpreting the initial steep increase of kids  
18 being placed 80 percent or more of the time in  
19 general ed, and then the fact that it's tapered  
20 off since.

21 And so that's my -- and you're correct  
22 that that does not specify kids with  
23 behavior-related disabilities, but it would  
24 include them.

25 So this Williamson, et al. was focused



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1 on all kids with disabilities.

2 Q. Would that include physical and  
3 mobility-related disabilities?

4 A. I believe so.

5 Q. Okay.

6 A. I would have to look at it closely,  
7 but yes, I think so.

8 Q. Is it your belief that the vast  
9 majority of students with disabilities cannot be  
10 educated in general education settings?

11 A. The vast majority of students with  
12 disabilities cannot be.

13 No. That's not my belief. But I  
14 think that we answer that question -- again,  
15 it's just unavoidable that we do it kid by kid.

16 And, you know, we've made progress.  
17 And I would say that the increase in inclusion  
18 reflects that we have identified and we've  
19 overcome some implementation barriers where we  
20 can appropriately teach kids in general  
21 education.

22 But not completely. And, again, the  
23 vast majority thing just throws me off because  
24 I'm not thinking about these kids as one lump  
25 population. It's -- we have to think about

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1 these kids individually, kid by kid, like the  
2 way that an IEP team does.

3 Q. Now, in here you wrote about "the  
4 reality that general education does not have  
5 unlimited capacity."

6 And, Doctor, would you agree that  
7 additional or better allocated resources can  
8 expand a general education's environment  
9 capacity to include students with disabilities?

10 MS. JOHNSON: Object to form.

11 A. I think it's possible to implement  
12 practices that could make general education more  
13 responsive to some kids with behavior-related  
14 disabilities.

15 Q. Which you said earlier you're in favor  
16 of, correct?

17 A. I am in favor of that.

18 Again, you know, we've got this sort  
19 of really important but broad statement that  
20 with, you know, appropriate services -- that we  
21 don't remove kids from general ed without first  
22 providing them appropriate services and  
23 supports. But that's been tough to figure out  
24 in general.

25 We've made progress, but we're not all

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1 the way there. And it's also a determination  
2 that I think has to be made on an individual  
3 basis, to say what are appropriate services and  
4 supports for this student. And then the IEP  
5 team has to make a difficult judgment and say  
6 for this student they may need a more special  
7 placement in order to more appropriately provide  
8 their IEP.

9 Q. But you agree that the first step is  
10 or should be to try implementations of supports  
11 and services in a general education setting,  
12 correct?

13 A. I think that general logic applies. I  
14 do think that it's possible in some cases that  
15 you know enough about -- like, so, an IEP team  
16 is not sort of beholding mindlessly to that  
17 process. Meaning they may know wow, this  
18 student has -- clearly has really significant  
19 needs. And so they can make a determination.

20 So it's not that you have to spend X  
21 amount of time testing out whether or not  
22 general ed will work necessarily. But that  
23 logic does generally apply, where you say hey,  
24 here's some reasonable things we could try to do  
25 to appropriately serve this kid in general ed,

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1 and then if it doesn't ...

2 But what I'm trying to explain is  
3 that -- and this is part of the logic of, for  
4 example, response to intervention, which really  
5 began as a special ed eligibility process.  
6 Right.

7 So kids with academic problems. Let's  
8 make sure we, you know, make instruction good  
9 for everybody. Then let's provide them with  
10 some supplemental services.

11 But from the beginning the researchers  
12 in RTI and also the law makers have sent dear  
13 colleague letters that said you can't, you know,  
14 force people to sort of mindlessly go through  
15 the process of first we're going to try A, then  
16 B. The IEP team can make that determination.

17 But the logic of saying let's make  
18 general ed as responsive as possible, I think  
19 that's correct. I mean, that's sort of what  
20 we're after.

21 But an IEP team could, all I'm saying,  
22 is could legitimately say but for this student,  
23 we've made a judgment based on their needs that  
24 we can go right to a self-contained classroom or  
25 a different ...

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1 Q. But you would expect those to be rare,  
2 correct?

3 MS. JOHNSON: Object to form.

4 A. I don't -- I don't know.

5 Q. Okay.

6 A. I mean, it's going to depend really on  
7 the school where the student is at and a lot of  
8 different factors. So I can't -- I don't know  
9 that I would feel good saying it's rare, common  
10 or -- sorry.

11 Q. No.

12 Is that because you're not aware of  
13 research related to that?

14 A. Again, the most -- the closest thing  
15 would be response to intervention, which is not  
16 necessarily focused on -- where they've tested  
17 this concept where, you know, the decision  
18 driver is let's implement effective practices  
19 and then make a determination after that based  
20 on the -- that's where the response comes from,  
21 right, response to intervention. And so  
22 response becomes sort of the measurement.

23 And so, Matthew, to your question, I'm  
24 not aware of research specifically that has sort  
25 of quantified that or made that, you know,

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1 really clear.

2 Q. Thank you.

3 Dr. Wiley, let's turn to page 16,  
4 please.

5 A. Okay.

6 Q. Which is your table 2.

7 A. All right.

8 Q. My first question is --

9 MS. ADAMS: Sorry, Matthew. I'm  
10 just going to interrupt for a second.

11 It sounds like from some folks who are  
12 on the Zoom that it's a little bit hard to  
13 hear you right now.

14 THE WITNESS: Oh. I'm sorry.

15 MS. ADAMS: I don't know if  
16 anything is different with the microphone.

17 - - - - -

18 (A discussion was held off the record.)

19 - - - - -

20 THE VIDEOGRAPHER: That is active.  
21 Do you want to go off the record and check  
22 the settings?

23 MR. GILLESPIE: I think let's try  
24 this, and if there's still an issue, we'll  
25 pause.

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1 BY MR. GILLESPIE:

2 Q. All right. First question. Who  
3 created this table?

4 A. This is data that's reported to  
5 Congress by IDEA. So it's the Office of Special  
6 Education Programs, I believe. This is an IDEA  
7 data table taken directly from a federal data  
8 website.

9 Q. And do you know how -- sorry.  
10 You said this came from IDEA. And  
11 when you say that, to what are you referring?

12 A. So there are annual reports to  
13 Congress on IDEA data. So special education  
14 data. And there are a variety of things and  
15 they include, like, how many kids were served  
16 and where they were served and those kinds of  
17 things.

18 And this is one of the tables that  
19 breaks out emotional disturbance.

20 There are one or two-year more recent  
21 tables, but COVID was so odd that I went with  
22 2019.

23 And I also will say, I would have to  
24 confirm this, but these numbers don't tend to  
25 radically change year to year. So ...

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1 Q. Do you know how this data's collected?

2 A. The states are required to report it.  
3 I don't know the nuts and bolts of it exactly,  
4 but all states are required to report how many  
5 kids are identified, under what categories, and  
6 some other things. Exit, like graduation, data.  
7 There are a number of things that are collected  
8 for IDEA every year.

9 Q. And you didn't take any steps to  
10 independently validate any of this data,  
11 correct?

12 A. I did not. I'm assuming that this  
13 federal data would be accurate. But it  
14 certainly could have errors in it that I'm not  
15 aware of.

16 Q. Do you know what constitutes a  
17 separate school under this chart?

18 A. I think that a separate school --  
19 uh-oh. Is that someone --

20 Q. Yeah, we're good. You're good.

21 A. Okay. You can see these categories.  
22 80 percent or more of the school day in regular  
23 class, 40 to 79 percent, and then less than 40.

24 And I think a separate school would be  
25 entirely separate from general education. So



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1 essentially zero percent in a general ed school.

2 Q. And is that your assumption from  
3 looking at this, or did you see that somewhere?

4 A. That's my understanding --

5 Q. Okay.

6 A. -- yeah. There may be definitions,  
7 but I'm pretty sure -- I've done some research  
8 around these IDEA data, and I'm pretty familiar.  
9 So I think I'm right, but ...

10 Q. Is GNETS considered a separate school  
11 for purposes of this data, or -- do you know?

12 A. I would assume that because these are  
13 kids with IEP they're being reported with the  
14 other state data. And I know that GNETS is some  
15 separate schools, also has some self-contained  
16 classrooms.

17 So my guess would be in Georgia the  
18 GNETS, for example, that are in the  
19 self-contained classrooms could be under less  
20 than 40 percent of the day.

21 But, yes, my assumption would be that  
22 the GNETS students are in separate schools for a  
23 GNETS program would be in that 9.9 percent.  
24 That's my assumption.

25 Q. And when you say GNETS students in a

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1 self-contained classroom, can you expand for me  
2 what your understanding of -- what that looks  
3 like?

4 A. Well -- are we good? In a -- I don't  
5 know why I thought -- self-contained would fit  
6 sort of conceptually but also numerically in  
7 that less than 40 percent of the school day.

8 So typically if you have a student who  
9 is a self-contained classroom, they're pretty  
10 likely to fall somewhere between that 1 to  
11 40 percent of their day they're taught in some  
12 sort of general education setting.

13 Q. Would you expect a self-contained  
14 classroom to be part of a general education  
15 building?

16 A. Not necessarily every building has  
17 self-contained classrooms. You know, the  
18 example of Ohio is we have things that are  
19 called -- they refer to them as units, but there  
20 are autism units, and there may be one or more  
21 self-contained classrooms that primarily serve  
22 kids with autism in a general ed school.

23 There also are ones that are related  
24 to kids with emotional, behavioral disorders.

25 I think what I'm describing for Ohio

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1 is pretty typical around the country, but I'm  
2 saying based on the way that I understand how  
3 self-contained classrooms usually are.

4 Not every school will have  
5 self-contained classrooms. That's pretty  
6 typical. Often they're, you know, in this  
7 school but in not in another school.

8 Q. Are students in a self-contained  
9 classroom typically able to interact at all with  
10 general education peers?

11 A. It depends on the self-contained  
12 classroom. Again, that less than 40 percent  
13 suggests that at least for some of those  
14 students served in those self-contained there  
15 are some time spent in general education  
16 classrooms or settings.

17 Q. And stepping back for a second.  
18 What is a situation in which a student  
19 would be more appropriately served in a  
20 completely separate school compared to a  
21 self-contained classroom?

22 A. Well, can I use examples?

23 Q. Please.

24 A. You know, for my work in Fairfax  
25 County, there were public schools that were

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1 schools for kids with emotional, behavior  
2 disorders all over the county. And most of them  
3 were separate schools, but some of them also had  
4 these sort of self-contained classrooms.

5 And when students had, for example,  
6 behavior and/or academic problems that were not  
7 responsive to the services provided in that  
8 service delivery model, they would often come to  
9 the program where I worked.

10 The program where I worked in some  
11 ways was an attempt to provide within Fairfax  
12 County the level of service that's often  
13 provided in, like, private day schools. But  
14 Fairfax County decided that they wanted to try  
15 to do it, I would argue, quite successfully.

16 So a lot of those kids who were having  
17 lots of behavioral incidents, lots of  
18 difficulties, not doing well academically, would  
19 come to Olde Creek, and they would -- most of  
20 them did -- made much better progress.

21 Q. And -- I apologize if I'm missing it.

22 What is it that would make it so a  
23 student would have to be placed in a separate --  
24 completely separate school as opposed to a  
25 self-contained classroom within a larger general

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1 education setting?

2 A. Yeah. So I think that it would be  
3 that if they weren't making satisfactory  
4 progress in the self-contained classroom.

5 Q. Thank you.

6 Turning back to table 2.

7 A. Yes.

8 Q. From this table, in your review of the  
9 material underlying this table, are you able to  
10 discern the categories of supports and services  
11 provided to students in any of these settings?

12 A. That is not included in this table.  
13 And I'm trying to think if anything -- and, you  
14 know, this is one of the things that -- when  
15 I've written about instructional inclusion, it's  
16 very -- in some ways it's really easy to collect  
17 data that says where are the kids. Right. Are  
18 they in general ed.

19 Understanding what services and  
20 supports there I think would be great to know,  
21 but it's much more difficult to figure out a way  
22 to collect those data and then report them.

23 But it doesn't -- it doesn't -- this  
24 table will not tell you what services and  
25 supports are provided.

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1 Q. And, similarly, from this table you're  
2 not able to discern the quality of supports and  
3 services provided to students in any of these  
4 settings, correct?

5 A. Not from this table, no.

6 Q. Do you know, are GNETS program sites  
7 considered schools under Georgia law?

8 MS. JOHNSON: Object to form.

9 A. I -- my understanding of what I read  
10 about GNETS, from what I remember, is that they  
11 are considered schools.

12 Q. So I will represent to you that  
13 regional GNETS program sites are specifically  
14 excluded from the state's definition of a  
15 school.

16 A. Okay.

17 Q. And so knowing that, can you say with  
18 certainty how students placed in GNETS are  
19 reflected in this data?

20 A. Well, what I can say with 99 percent  
21 certainty is that if they have IEPs, then it  
22 should be required that the state of Georgia is  
23 reporting their placement.

24 So my assumption is -- and, again,  
25 kids with IEPs are served in different places in

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1 different states, but I would assume that that  
2 would -- how they would be reported with their  
3 IEPs.

4 Did I dive into exactly how Georgia is  
5 reporting these required federal data, no, but I  
6 think I could assume that that's what they would  
7 be reported under.

8 Q. Dr. Wiley, let's turn to page 19,  
9 please.

10 I'm looking at the first full  
11 paragraph under the "CAP" title, subheading.  
12 You wrote, the last sentence -- last two  
13 sentences there, "Students are referred to GNETS  
14 through the IEP process, as required by IDEA.  
15 If an IEP team determines that a student with a  
16 behavior-related disability has not benefited  
17 educationally in a less specialized placement,  
18 placement in a GNETS program can be considered.

19 Dr. Wiley, what were these  
20 statements -- actually, let me rephrase that.

21 Were these statements based off of  
22 your review of the things listed in the  
23 considered materials?

24 A. The manual would be one where -- I  
25 believe that's where I read the description of

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1 the procedures for referral to GNETS. And it  
2 also came up in my conversations with some of  
3 the Georgia Department of Ed staff.

4 Q. And -- but you did not evaluate the  
5 supports and services offered by Georgia's  
6 general education requirements, correct?

7 A. For individual students, no, I didn't.

8 Q. Or collectively.

9 A. Or collectively. That's correct.

10 Q. And you can't speak to what  
11 alternative placements are actually available to  
12 students with disabilities in the state of  
13 Georgia, correct?

14 A. Do you mean other kinds of special  
15 schools besides GNETS? When you say  
16 "alternative," I'm just trying to --

17 Q. Yeah. Referring to the -- again to  
18 the continuum that you're talking about --

19 A. Yeah.

20 Q. -- in this section.

21 A. Yeah.

22 Q. You can't speak to what other options  
23 there are in the continuum in the state of  
24 Georgia, correct?

25 A. I can't except that, as you saw in the



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1 regulations for IDEA, that schools are required  
2 to offer general ed, resource rooms,  
3 self-contained special schools.

4 Based on that, you're right, I haven't  
5 gone in and double-checked that, but it would be  
6 surprising to me if they didn't have something  
7 like that.

8 Q. But even within what's provided within  
9 the IDEA, what that actually looks like in  
10 practice can vary quite a bit from state to  
11 state and even district to district, correct?

12 A. It varies, but not as much as some  
13 people might think. And that's one of the  
14 interesting things about this case to me, is  
15 that -- I think that people have looked at  
16 Georgia like these are really unusual things  
17 going on.

18 I think you'll probably talk about the  
19 next paragraph where I try to provide examples  
20 of it may not be identical to GNETS, but there  
21 are a lot of ways that different states provide  
22 the continuum of placements or services.

23 But -- okay. So if you're saying do I  
24 know whether it's like other states, I don't  
25 know that. I would be surprised if it was much

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1 different.

2 Q. Are there students placed in GNETS  
3 without FBAs beforehand?

4 MS. JOHNSON: Object to form.

5 A. I don't know. I don't know. And I  
6 didn't look at individual students in order to  
7 rebut the claims that I laid out at the  
8 beginning.

9 I am not sure where the experts  
10 reported that that is the case or to what extent  
11 it is the case.

12 I would also say the tough part about  
13 functional behavior assessment is that it is  
14 required by IDEA, but under a really narrow set  
15 of circumstances. And there are people in my  
16 field who say it's too bad that -- you know.

17 But I -- again, just like I said, an  
18 IEP team may not have to make a decision based  
19 on checking a rigid number of boxes.

20 They may be able to say well, here's  
21 what we did, these were the services we  
22 provided, but it's the determination of the IEP  
23 team that a more specialized placement is  
24 needed.

25 The short answer is, though, that I

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1 did not look at individual files to say how many  
2 do and how many don't. I have no idea.

3 Q. Thank you.

4 Let's go to the next page, please.

5 A. Okay.

6 Q. Page 20.

7 I'm looking at the bottom. The second  
8 to last sentence you wrote "Full inclusion  
9 proponents believe that FAPE can be provided in  
10 general education to all or very nearly all  
11 students with disabilities, regardless of their  
12 special education needs."

13 And when you use "general education"  
14 here, what do you mean by that?

15 A. I think primarily I would be referring  
16 to general education classrooms, because full  
17 inclusion proponents, and I didn't cite them  
18 here, but people who make this argument are  
19 saying that we could teach all of these kids in  
20 general ed, or very nearly all.

21 Some people give a little bit of  
22 qualification. I think I use the example later,  
23 but the SWIFT Center, which is, you know, maybe,  
24 I don't know, a funded center. Their motto is  
25 "All means All."

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1                   So I think that what they're saying is  
2                   that all students can be taught in general  
3                   education classrooms.

4           Q.           And do you understand that to mean  
5           general education classrooms with or without  
6           supports?

7           A.           I think that that -- the full  
8           inclusion proponents are saying with supports.

9           Q.           Okay.

10          A.           That they -- that that FAPE can be  
11          provided.

12          Q.           Dr. Wiley, out of curiosity, why are  
13          you addressing what full inclusion proponents  
14          believe in your rebuttal report?

15          A.           I think because the experts tried to  
16          characterize certain statements as the consensus  
17          of the field.

18                   I also think that in particular  
19          Dr. McCart, I think, probably -- again, I can't  
20          characterize her, she would have to do it the  
21          way she would, but I think that she does -- some  
22          of her publications suggest that she believes  
23          that all kids could be -- all, or very nearly  
24          all.

25                   So I was trying to give it a context

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1 in the field, that there are people who think  
2 with the right services and supports all, or  
3 very nearly all, but I would argue that even  
4 though there have been full inclusion advocates  
5 since the '80s at least, and earlier really, the  
6 consensus of the field is that we don't know how  
7 to do that. Ethically or effectively.

8 Q. And so am I correct, then, in  
9 understanding that this isn't in response to  
10 anything in either of the United States' expert  
11 reports, but rather you trying to lay out what  
12 your understanding of the status of opinions in  
13 the field are?

14 A. It may not have worked perfectly, but  
15 I think I was trying to rebut the whole notion  
16 of there's a consensus.

17 Q. Okay.

18 A. And to understand that there are  
19 different views. And one of those views is full  
20 inclusion.

21 Q. Okay. Let's go to the next page,  
22 please.

23 A. Okay.

24 Q. The first line you wrote "For as long  
25 as full inclusion proponents have called for the

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1 elimination of the LRE and CAP, special  
2 education researchers, leaders, and advocates  
3 have, in turn, criticized and questioned the  
4 feasibility, wisdom, and ethicality of full  
5 inclusion."

6 And again same question. Is this in  
7 response to anything in either report?

8 A. It's in response to the idea that  
9 there's a consensus that the vast majority of  
10 kids with behavior-related disabilities could be  
11 served in general education.

12 And I'm trying to give an example of  
13 highly cited research that spans a long period  
14 of time that has said this full inclusion is not  
15 supported by the evidence.

16 Q. But was there anything in either --  
17 well, okay. Thank you.

18 A. Yeah, I didn't say it, and I probably  
19 could say, you know, when Dr. McCart or Putnam  
20 says the consensus of the field. I didn't make  
21 that clear, but that is what I'm trying to  
22 rebut.

23 Q. All right. Let's go to the next  
24 sentence after the string cite there.

25 A. Sure.

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1 Q. You wrote "Critics of full inclusion  
2 highlight the lack of evidence that all or very  
3 nearly all students with disabilities can be  
4 effectively and appropriately taught in general  
5 education environments."

6 Again are you saying that the evidence  
7 does not support that all or nearly all students  
8 with disabilities generally can be educated in  
9 general education environments?

10 A. That's correct.

11 Q. Okay. Now, if I can, turning back to  
12 table 2 on page 16.

13 A. Sure.

14 Q. The table here that you cite shows  
15 that nationally, just with students with  
16 emotional and behavioral disabilities, over  
17 80 percent are educated in general education  
18 some or all of the time, correct?

19 A. What page is that on? I can't believe  
20 I can't find my own table.

21 Q. 16. 16.

22 A. Thank you. 16.

23 I was like "Is it before this or  
24 after?" I really should know.

25 Okay. So this may be a confusion of

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1 the table, but when you say 80 percent of  
2 students with --

3 Q. Well, -- so I'm --

4 A. Go ahead.

5 Q. -- just looking at inside the regular  
6 class.

7 A. Yeah.

8 Q. You look at all states, and the three  
9 numbers there.

10 Over 80 percent are in general  
11 education or regular classes some or all of the  
12 time, correct?

13 A. So let me clarify that what that  
14 column means is this is the percentage of kids  
15 with emotional disturbance who are taught  
16 80 percent or more of the day in regular  
17 education. So the 80 percent doesn't refer to  
18 the kids.

19 Q. Yeah.

20 A. Right.

21 Q. I'm with --

22 A. Okay.

23 Q. -- you, actually.

24 A. Okay.

25 Q. But I'm actually -- I'm adding the



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1 first three columns.

2 A. Okay.

3 Q. That show that some percentage of the  
4 day, some it's less than --

5 A. Oh, okay. I see what you're --

6 Q. Right.

7 A. Yeah. Yeah. Yeah.

8 Q. So it's confusing because 80 percent  
9 shows up two different ways.

10 A. Yeah.

11 Q. But I'm saying if you look at all of  
12 the state's data, this shows that over  
13 80 percent are educated in general -- this is  
14 just students with behavior -- with emotional  
15 disturbance.

16 A. Correct.

17 Q. Over 80 percent are educated across  
18 the country in general education settings some  
19 or all of the time, correct?

20 A. Right.

21 Q. And so I'm trying to reconcile this  
22 with your statement on page 21.

23 A. That there isn't evidence that they  
24 can be.

25 Q. That there isn't evidence that they

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1 can be educated in general education  
2 environments.

3 A. Well, you're right that it's  
4 80 percent, but there's still 12.3 percent, plus  
5 whatever the other percentages are, who are not  
6 served in general ed. So this is where the  
7 fuzzy terms get difficult. If we're talking  
8 about all, this wouldn't provide support for  
9 that. What is vast majority. If it's  
10 80 percent.

11 Now, I mean, the other thing that's  
12 really important if, you know, you're thinking  
13 about placement and, you know, how to use the  
14 continuum of alternative placement is that, like  
15 you said earlier, this doesn't say anything  
16 about the services that are provided, either in  
17 a separate setting or general education.

18 And so the fact that 80 percent are in  
19 general education does not mean that they're all  
20 being appropriately and effectively served. Or  
21 as appropriately and effectively as they can be.

22 Q. Is it your opinion that there should  
23 be fewer students with ED being served in  
24 regular classes some or all of the time?

25 A. My opinion is that we should focus

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1 first on what is appropriate instruction at the  
2 individual level. And that if we -- the more  
3 that we can provide those in general ed, that's  
4 great, but we shouldn't include kids or fuss  
5 with these numbers until we know, like, here are  
6 the ways that we can deliver this type of  
7 support to the student with this level of need  
8 or this type of need. And my general argument  
9 is that we don't know that.

10 So when we say there isn't evidence  
11 that we can effectively serve these kids, you  
12 know, there are other indicators we can use  
13 about these services. And they include things  
14 like involvement with the juvenile justice  
15 system, dropout, failing classes.

16 If we're just looking at placement,  
17 you know, we might go "Yay, we've done a great  
18 job," but when we look at those outcomes we say  
19 maybe we've lost focus on appropriate intensive  
20 services and that's going to be the most  
21 important thing.

22 That's my opinion and my perspective.  
23 I'm not saying they should be more or less, I'm  
24 saying that we should do more to ensure that  
25 kids with EBD who need special education are

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1 identified and get the appropriate services to  
2 their individual needs as we can.

3 Q. But if I understood you correctly,  
4 what you were saying a few moments ago with  
5 relation to this table 2 is that you can't tell  
6 from this whether students who are in regular  
7 classrooms some or all of the time are being  
8 appropriately served in --

9 A. Not in this table. That's right.

10 Q. But you also can't tell for students  
11 in separates schools; is that correct?

12 A. I can't tell for either one.

13 Q. Okay.

14 A. This is just how many are served in  
15 these particular settings. That's right.

16 Q. When you use this term in this  
17 sentence that we discussed back on 21 --

18 A. Okay.

19 Q. When you use the term critics of full  
20 inclusion, do you include yourself in that  
21 group?

22 A. Yes.

23 The "full" is the critical qualifier.  
24 I am not a critic of inclusion, appropriate  
25 responsible inclusion.

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1 I'm probably talking too quietly. I'm  
2 worried.

3 MS. ADAMS: We haven't gotten  
4 any --

5 THE WITNESS: Oh, good. So we're  
6 all right. Thanks.

7 Q. In your opinion is there a difference  
8 between educating students so that they have  
9 interactions with general education peers in  
10 educating students in general education  
11 environments?

12 A. I just --

13 MS. JOHNSON: Object to form.

14 A. -- might need that one unpacked a  
15 little bit.

16 Q. I'm just trying to see is there a  
17 distinction between educating students in a way  
18 that they are able to interact with general  
19 education peers either -- you know, that could  
20 be the cafeteria. It could be extracurriculars.  
21 It could be whatever. Is that the same thing as  
22 educating students in general education  
23 environments to you?

24 MS. JOHNSON: Object to form.

25 A. So you're asking me if I make a

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1 distinction between educating students when they  
2 interact with nondisabled peers and -- what was  
3 the second part? I'm sorry.

4 Q. No. I'm trying to figure out if there  
5 is a distinction.

6 A. Okay.

7 Q. You know, if -- would you consider --  
8 a self-contained classroom where students are  
9 able to interact with nondisabled peers, would  
10 that transition out to a general education  
11 setting in your mind? Is that still a  
12 specialized setting that allows for interaction  
13 with nondisabled peers? Where does that fit for  
14 you?

15 A. If I'm understanding your question  
16 correctly, it's on that continuum. Right. So  
17 self-contained would be the 40 percent or less  
18 in general ed.

19 You know, I think that, again, if --  
20 we're very thoughtful about nondisabled peers  
21 and how, you know, interactions with nondisabled  
22 peers can for some students enhance their  
23 educational outcomes, their educational  
24 experience. That's great.

25 I'm always wary of the assumption that

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1 people think that we just put them together and  
2 magically things happens. And that's not the  
3 case. That's not the nature of disabilities.

4 But I also want to emphasize here  
5 that, again, from my experience, but also from  
6 some of the research that I cited, that the  
7 social experience of being in a special school  
8 can be remarkable.

9 And what I'm weary of is -- I do agree  
10 with the presumption, and for all the reasons  
11 that we've sort of discussed so far, but I also  
12 am weary of this argument that somehow because  
13 kids with disabilities only interact with  
14 each other that that's going to be inherently  
15 harmful. It's not intentional. But in a way to  
16 me it can devalue the kids with the disabilities  
17 themselves.

18 And I have examples, not just from  
19 when I was a teacher. I didn't include my  
20 paraprofessional experience. I worked in a  
21 special school in Alameda, California. And it  
22 was a incredible place and these kids became  
23 great friends with each other. They made great  
24 progress.

25 All I'm saying is that it's a mistake

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1 to think, one, that you can just put them  
2 together and things will happen.

3 And, two, that, you know, that's there  
4 end-all and be-all, most important thing of the  
5 educational experience of students with  
6 disabilities, if that makes sense. Okay.

7 Q. I follow you.

8 So let's go to the next paragraph, if  
9 we can. We're still on page 21.

10 A. Okay.

11 Q. And I'm going to start halfway through  
12 that first sentence. You wrote "full inclusion  
13 advocates underestimate the academic,  
14 behavioral, and social problems exhibited by  
15 many students with disabilities, particularly  
16 students with behavior-related disabilities."

17 And I don't see that there's a  
18 citation to this statement.

19 Is this your personal opinion of full  
20 inclusion advocates generally?

21 A. It is my opinion. And in my  
22 scholarship I've cited examples of that. I  
23 didn't do that here. I'll be honest that I  
24 didn't cite some of those examples. It was sort  
25 of a part of me that was trying to be polite in



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1 this context.

2 And not that it's -- you know, again,  
3 there are legitimate wide opinions in the field.  
4 I'm not says it so shameful.

5 But I think what you will see  
6 consistently -- in some of the things that I've  
7 written I've talked about this, is that when you  
8 advocate and say yeah, we can do this with all  
9 kids, there tends to be a way of describing  
10 those kids that doesn't acknowledge how diverse  
11 they can be, how, you know, intensive their  
12 problems can be.

13 But you're right. I didn't cite those  
14 examples here, but I could. I could, if anybody  
15 needed them at some point, give you some  
16 examples of what I'm talking about.

17 And, by the way, that's not just full  
18 inclusion advocates, just so that you have the  
19 full context. There are examples.

20 For example, when response to  
21 intervention was sort of the big thing that was  
22 emerging, and there were people who said look,  
23 we can do response to intervention, we don't  
24 need special ed anymore.

25 And when those folks said, they tend

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1 to talk about oh, these kids with, you know,  
2 academic problems, they're not so tough, we just  
3 need to make a few tweaks.

4 So that's my point. For some kids a  
5 few tweaks can absolutely get you there. But  
6 when we look at who these kids actually are, the  
7 whole population of kids with behavior-related  
8 disabilities, some of them have really complex  
9 and intensive needs.

10 And so I thought that was important  
11 because there were a few things in the report  
12 that to me reflected that, you know these kids  
13 are -- if you just listen to their  
14 communication, for example, they would be fine.  
15 And the truth is they're more complicated than  
16 that overall.

17 Q. So is this statement in response to  
18 anything in particular in either of the  
19 United States' experts reports?

20 A. Yeah. Again, in response to, I think,  
21 statements made by Dr. McCart in particular  
22 where she said sometimes they do this just to  
23 regulate their emotions and they need a few  
24 minutes of quiet time.

25 So, again, I didn't tie it into that

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1 directly, but that was one of the things that I  
2 was responding to.

3 But it also links to the previous  
4 section, which is why do we have to make these  
5 decisions on an individualized basis rather than  
6 saying the vast majority.

7 And it's because -- it's not that  
8 every kid with behavior-related disability is  
9 like another kid with a behavior -- right.  
10 There's a lot of diversity.

11 And so I wanted to include the  
12 research that says if we're going to respond to  
13 these kids appropriately and give them access to  
14 education in a meaningful way, we really have to  
15 consider this diversity and when their needs get  
16 really pretty complex.

17 Q. But to that point, for some students  
18 with behavior-related disabilities, at some  
19 times could a few minutes of quiet time be what  
20 they need to reregulate?

21 A. I think that that may be true, but  
22 just saying that is really all you need to do.

23 And I don't think -- it's one of the  
24 few specific things that I remember Dr. McCart  
25 mentioning, and to me it really mischaracterizes

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1 the intensity of the problems that we're talking  
2 about.

3 So strictly it's true. I just think  
4 that in order to understand this case, it's  
5 important to consider these kids in more depth  
6 than that.

7 Q. Do you believe that Dr. McCart in her  
8 role as an expert in this case is an advocate of  
9 full inclusion?

10 A. I would say that based on her writings  
11 and based on the SWIFT Center that she works  
12 for, to me that's what would be full inclusion.

13 I think one example would be, and I  
14 don't cite it here, but there's a publication by  
15 Wayne Sailor and Dr. McCart called the Stars in  
16 Alignment where they're talking about MTSS and  
17 how we're basically on the cusp of making full  
18 inclusion a reality.

19 And there are some people who think  
20 that, who think that MTSS can make general  
21 education appropriate for all kids, regardless  
22 of their needs.

23 So that's my opinion. Dr. McCart may  
24 say no, I'm not an advocate.

25 One of the challenges is that

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1 difference between are you saying all kids.  
2 Well, Dr. McCart makes exceptions. She says no,  
3 the vast majority. There are some kids who are  
4 going to need special placements. At least  
5 that's how I understand her report.

6 But if you're asking me in my view, I  
7 think that her perspective reflects that full  
8 inclusion perspective.

9 Q. And so when you're talking about full  
10 inclusion proponents and advocates and  
11 responding to what you understand some of their  
12 positions to be in your report, are you  
13 intending to respond to some of Dr. McCart's and  
14 others outside writing within your report?

15 A. I am not.

16 MS. JOHNSON: Object to form.

17 A. I am trying to respond to Dr. McCart's  
18 statements and conclusions in her report. Some  
19 of them are very much consistent with other full  
20 inclusion outside of here. That's sort of what  
21 I'm -- I mean, that's what I'm answering your  
22 question with. I was really trying to rebut the  
23 claims and the arguments, but -- does that make  
24 sense?

25 I would think -- I would say that some

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1 of the arguments that are made in here are  
2 reflective of the consensus of full inclusion  
3 folks in the field.

4 Q. Understood.

5 MR. GILLESPIE: We've been going  
6 for about another hour, hour 10. Do you  
7 want to take another break?

8 THE VIDEOGRAPHER: Okay. Off the  
9 record, 2:45.

10 - - - - -

11 (A recess was taken.)

12 - - - - -

13 THE VIDEOGRAPHER: We're back on  
14 the record, 3:00.

15 BY MR. GILLESPIE:

16 Q. All right. Dr. Wiley, we are still on  
17 page 21.

18 A. Okay.

19 Q. And we're moving on to section II.

20 In that bottom paragraph there, I'm  
21 talking about the end of that first sentence,  
22 where you refer to individualized educational  
23 programming required to address students with  
24 behavior-related disabilities needs.

25 And what I wanted to understand is

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1 what do you mean by saying "individualized  
2 educational programming required to address  
3 those needs"?

4 A. So in that sentence I'm referring to  
5 IEPs, but the emphasis on individualized, that  
6 we have to look at the types of special  
7 educational needs that each of these students  
8 have and also the intensity of those needs and  
9 make sure that we address them.

10 Q. And so you're just referring to the  
11 IEP itself here? Like the document?

12 A. I would say that I intend that to be  
13 linked to the IEP conceptually and as a practice  
14 that we have to think about the diversity of  
15 needs, the intensity of needs, and we need to  
16 make sure that we provide individualized  
17 programming that addresses those needs.

18 Q. And I guess when you say  
19 "individualized programming" there, I'm just --  
20 I'm trying to make sure I have a clear  
21 understanding of what you mean by that.

22 A. I think I mean both just as a broad  
23 concept that they need individualized  
24 educational programming, but it's okay if it  
25 also refers to IEPs specifically as part of

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1 special education.

2 I think I intended this mostly just as  
3 an introductory sentence. I don't know that I  
4 was trying to express anything earth shaking.

5 Q. I know. I understand.

6 A. But, no, that's fine.

7 Q. I just want to make sure, because, you  
8 know, when you say "individualized  
9 programming" -- I mean are there -- are you  
10 thinking of categories of supports and services  
11 or what can that entail?

12 A. Everything that would go into an IEP I  
13 think is the way to think about it. The  
14 services and supports that you provide to a  
15 student that address the educational needs of  
16 the student.

17 And in that sense, you know, the other  
18 part of the order is important in the law, not  
19 just because it's a law, but conceptionally, is  
20 that we first identify exactly the individual  
21 characteristics or needs of the student, then we  
22 identify the services and supports, and then we  
23 identify placement.

24 So it could be academic interventions.  
25 It could be social, emotional, behavioral



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1 interventions. That's what I'm referring to.

2 The things that would be reflected on an IEP to  
3 address the needs of the individual student.

4 Q. Okay. Thank you.

5 The next page, please. That middle  
6 paragraph. The one full paragraph.

7 A. Okay.

8 Q. And in the middle you say "For  
9 example, for students with emotional and  
10 behavioral disorders (EBD); estimates of the  
11 actual prevalence of EBDs in the school-aged  
12 population based on epidemiological studies  
13 indicate that between 3 percent and 6 percent of  
14 children and youth have EBDs severe enough to  
15 warrant intervention."

16 And my question's actually really  
17 simple. What do you mean by "warrant  
18 intervention"?

19 A. What I mean is that -- and when you  
20 talk about -- emotional and behavioral disorders  
21 are challenging to conceptualize, because they  
22 include both the behaviors and the emotions  
23 which are unusual, but then they also have some,  
24 in order for it to be a disorder, functional  
25 impairment.

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1           So does it impair my ability to make  
2 friends, hold a job, I'm talking children and  
3 adults, you know, learn. All of these different  
4 things.

5           And so the estimates in these  
6 epidemiological studies are based on that idea.  
7 Like who are the kids that have unusual emotions  
8 and behaviors that also impair them in some life  
9 area.

10           So those estimates sort of reflect out  
11 of the whole population, somewhere between 3 and  
12 6 percent -- some will say that's a conservative  
13 estimate, too, but require some kind of  
14 intervention, would warrant intervention in  
15 school, possibly special education. Could be  
16 mental health but not special education.

17           So it's a pretty broad -- but that's  
18 kind of how you in epidemiological studies --  
19 like if you're identifying the flu in a study,  
20 we know how to do that.

21           An emotional, behavioral disorder is  
22 behaviors that are outside of the norm and  
23 emotions and they impair you in some area of  
24 functioning. Without both of those things, you  
25 don't really have an emotional, behavioral

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1 disorder.

2 Q. And so are you using intervention  
3 synonymously with supports and services?

4 A. Yeah. And I don't mean it to be just  
5 necessarily special education, but that would be  
6 the way in which this is studies.

7 So there are people for a long time  
8 who have noticed that we have really low  
9 identification for kids under the category of  
10 emotional disturbance. But we have evidence  
11 from research that there are probably many more  
12 kids.

13 Now, some of those kids almost  
14 certainly are served under other categories;  
15 learning disabilities, OHI, you know, different  
16 things.

17 So -- but, nonetheless, there is some  
18 good evidence that a lot of these kids aren't  
19 officially getting services of any kind, which  
20 is also, I think, important to remember when we  
21 think about inclusion in general education, is  
22 it's not just the kids that we've identified and  
23 are giving services, but in some places there  
24 can be a lot of really needy kids in general ed  
25 classrooms who haven't been identified.

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1 Q. And -- thank you for that  
2 clarification.

3 A. Uh-huh.

4 Q. This analysis that you're referring to  
5 here, it was not of students with EBD in the  
6 state of Georgia, correct?

7 A. This particular thing that I cite or  
8 my analysis? You mean, like, Forness and  
9 Kauffman & Landrum?

10 Q. Yeah. Either way. It doesn't apply  
11 to the state of Georgia, correct?

12 A. Yeah, it doesn't refer to the  
13 prevalence of EBD specific to Georgia. Most of  
14 these are national studies. And there may be  
15 even a few from other countries, but mostly the  
16 United States, I think.

17 Q. Okay. Thank you.

18 Let's go to the next page, please.

19 A. Okay.

20 Q. We're going to look at the footnote  
21 there, and I'm going to start after Dr. McCart's  
22 quote.

23 You wrote "Again, because the  
24 individual characteristics and needs of students  
25 vary significantly, the apparent success of a

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1 few students with behavior-related disabilities  
2 does not mean that integrated provision of  
3 supports will work for the 'vast majority' of  
4 these students. Individual differences must be  
5 taken into account, as required by IDEA and  
6 sound special education practice."

7 Now, it's not your position that  
8 experts in your field can't ever generalize  
9 about student populations based on a review of a  
10 sampling of students, correct?

11 MS. JOHNSON: Object to form.

12 A. I'm going to try to answer, and you're  
13 going to tell me if I understood your question  
14 correctly.

15 You know, we do say things, for  
16 example, about generally effective practices for  
17 students with EBD. And in that sense that's  
18 kind of a generalization. Right.

19 We say hey, here's a practice that  
20 this research suggests may be effective with  
21 kids with EBD. But.

22 I think there's always an  
23 understanding that kids with EBD, like any  
24 disability category, is very diverse. So we  
25 always do it sort of with an asterisk that

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1 says -- you know, and I think you see it in some  
2 of the more recent position papers on the state  
3 of the field, which I cite in different places,  
4 that we've made progress helping many kids with  
5 EBD, but a lot of times there's that caveat that  
6 when we're talking about the kids with the most  
7 intensive, we still got things that we need to  
8 figure out.

9 Does that answer your question?

10 Q. I think so.

11 A. Okay.

12 Q. But let me paraphrase to make sure I'm  
13 understanding correctly.

14 A. Okay.

15 Q. You don't object to making, drawing  
16 conclusions about student populations generally,  
17 as long as you account for the fact that there  
18 will be exceptions and individualized  
19 assessments being made --

20 A. Yeah.

21 Q. -- to recognize those; is that  
22 accurate?

23 A. That is accurate in this context. I'm  
24 mentioning it because Dr. McCart points to an  
25 example of at least one student -- one student,

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1     yeah, and just to be careful that because one  
2     student appears to be successful, that that's  
3     not a strong argument that we can now meet the  
4     needs of all kids. That sort of was my only  
5     point. I would not generalize for one student.

6     Q.         Thank you.

7                 Are you aware that Dr. McCart reviewed  
8     dozens of student records in forming her  
9     opinions in this case?

10     A.         I am aware of that, but it's not clear  
11     to me in her report exactly how she reviewed the  
12     reports or how she came to her conclusions.

13     Q.         And are you aware that Dr. McCart  
14     conducted 70 site visits to GNETS programs?

15     A.         I am over a period of time that -- my  
16     question, again if I'm putting my manuscript  
17     reviewer hat on would be how did you structure  
18     those interviews, did you use any kind of  
19     standardized observation instrument, and did the  
20     number of days over 70 sites really justify your  
21     ability to draw conclusions.

22                 And I think a thing that I would say  
23     as a manuscript reviewer -- and I don't know if  
24     this works for everybody. I would say you're  
25     really being overly confident in the validity

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1 and the reliability of your findings. You have  
2 to be able to justify that.

3 I think in a case where we're trying  
4 to understand what's happening in these GNETS  
5 programs and what's happening in these -- in  
6 zone schools, that some level of rigor would  
7 have been better, to say I can draw, you know,  
8 any kind of -- I can put any kind of confidence  
9 in her findings.

10 Q. Would you agree that somebody that's  
11 reviewed individual student records, conducted  
12 on site observations, that has observed students  
13 live would be in a better position to opine on  
14 the needs of a student population?

15 MS. JOHNSON: Object to form.

16 A. And you're talking about in this  
17 specific example, not McCart observing in  
18 general but --

19 Q. I'm talking generally.

20 A. That literal question, that direct  
21 question.

22 Q. That direct question.

23 A. Not if they're using biased methods to  
24 collect that information. And we are sometimes  
25 not aware that we're being biased in what we're



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1 paying attention and not paying attention to and  
2 that's why use of a standardized at least  
3 procedure, if not instrument -- and there are  
4 a lot of observation protocols that are  
5 available -- would to me make me better able to  
6 respond to her findings.

7 So if you go in with a conclusion in  
8 mind, and I'm not saying that but I'm just  
9 saying if, then I would not put more confidence  
10 in those findings, I would question them.

11 Q. So let's address that parameter you've  
12 put there.

13 A. Yeah.

14 Q. So assuming somebody's doing an  
15 evaluation in good faith, would you agree that  
16 somebody who's done those things, who's looked  
17 at individual student records, gone on site,  
18 conducted live observations, would be in the  
19 position to make observations about the student  
20 population that was reviewed and observed?

21 MS. JOHNSON: Object to form.

22 A. And I want to be clear. I am not  
23 questioning at all Dr. McCart's motives when I  
24 say this. A lot of times the bias and  
25 observation is not intentional at all.

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1           There are advantages, if your goal is  
2           to accurately characterize something, to going  
3           and observing and doing all of these things, but  
4           if you're not careful about how you do it, your  
5           conclusions could be much less reliable than  
6           someone who I spoke to and said here's what we  
7           do every year.

8           That would have added as well, is to  
9           kind of triangulate some of her records reviews  
10          and observations with GA -- Georgia Department  
11          of Ed staff, right, to say here's what I found.  
12          Can you give me more context for this?

13          And they might have said "Oh, well,  
14          here's some records that show ..."

15          So it's tough. You know, if your goal  
16          is to provide accurate information, to me it  
17          depends on how you do it whether or not you  
18          would be better able to characterize what's  
19          happening, who the students are, and those kinds  
20          of things. Right.

21          You said in good faith, and I'm just  
22          going to replace that with using sound methods,  
23          and then I would say yes.

24          Q.           Okay.

25          A.           Using sound methods, then I would say

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1 they're in a better position to say what's  
2 happening.

3 Q. You said a couple times now that --  
4 you know, about objections to methodology.

5 If you were reviewing the  
6 United States' experts reports as though it were  
7 a manuscript, is that the standard that you kind  
8 of apply to the --

9 A. Only the methods.

10 Q. -- United States' experts reports?

11 A. And I didn't literally do that, but  
12 I'm giving you an analogy where I would say  
13 okay, you did these things, you drew these  
14 conclusions and you interpreted this way. I  
15 would say now we need to be mindful of the  
16 limitations of what you did.

17 And I would be -- for me, if I had  
18 used methods that I felt were shaky, I would  
19 qualify them quite a bit and say I only went for  
20 this number of days. Or it may be that I didn't  
21 observe something in the record that could have  
22 been there.

23 That's sort of what I'm saying. I'm  
24 not saying I reviewed their entire report that  
25 way. I took the conclusions and claims, and I

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1 did my best to rebut them using the sources that  
2 I talked about.

3 Q. And so -- I'm sorry. I just want to  
4 make sure that I'm understanding what you're  
5 telling me.

6 A. Yeah.

7 Q. You're saying that you applied the  
8 standard that you had applied to an academic  
9 manuscript to the United States experts'  
10 reports -- to the United States' experts  
11 methodology in putting together their reports;  
12 correct?

13 A. I -- and I would have expected --  
14 maybe not even what would be stringent enough to  
15 pass peer review, but I would have expected  
16 something more structured and, you know, more  
17 based on something from standards in the field.

18 You know, Dr. McCart's table was  
19 interesting, but I didn't understand how she  
20 applied it. She just gave sort of different  
21 definitions and examples to her of what would be  
22 segregation.

23 And then -- so I think that when you  
24 say that, I would say I get it. I wouldn't  
25 expect them to have all of the resources and

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1 time to do it at the highest level of, like,  
2 peer-reviewed research, but I would expect that  
3 there would have been more transparency in the  
4 process and more checks on those findings.

5 Q. Do you think in putting together your  
6 report that your methodology was consistent with  
7 standards in the field?

8 A. My -- my -- well, -- so if I used the  
9 method if this was to be compared to research,  
10 it would be a synthesis of research around a  
11 particular problem.

12 And I think that what I did in terms  
13 of identifying literature that was relevant to  
14 the analysis -- again, maybe not quite to peer  
15 reviewed, but I think I had a process whereby I  
16 tried to identify research that synthesized  
17 everything. Right.

18 So if I used syntheses in literature  
19 reviews, it's not oh, I've cherry-picked a study  
20 here or there that I thought oh, yeah, this one  
21 really supports my case.

22 I was looking at here are the people  
23 who have synthesized research on a particular  
24 intervention or and inclusion and I'm basically  
25 reporting these are the things that they

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1 actually found.

2 Does that make sense?

3 Q. It does.

4 A. So I did make an effort to not have my  
5 bias in it. Bias, I also mean error. So there  
6 may be someone who would look at these things  
7 and say hey, I would have emphasized this more  
8 or that more. That's possible. There can be  
9 different interpretations.

10 Q. So if your report was intended to be a  
11 synthesis of research, then what role do the  
12 interviews and your review of the records we  
13 talked about before play into that process?

14 A. Yeah. So the materials that I  
15 reviewed and the conversations and things like  
16 that were meant to bring together both what we  
17 know from research and also specific contextual  
18 information for this particular case.

19 So I didn't want it to be, you know,  
20 purely academic. So I did include some things  
21 that were based on conversations that were based  
22 on my review of the materials.

23 You know, when you're saying that,  
24 maybe it's my mistake for using the manuscript  
25 example because it puts a little bit, you know,

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1 too much focus on that, but as far as the way I  
2 reviewed the literature as part of, not my  
3 entire, rebuttal report was -- it was made with  
4 effort to be objective about what the research  
5 says.

6 Q. And if you were to opine on the GNETS  
7 program specifically, what methodology would you  
8 use to conduct a thorough evaluation?

9 A. And this would be similar to, you  
10 know, my experience with program evaluation.  
11 And I can give you that example. Now, this was  
12 one program within a Massachusetts collective,  
13 but --

14 Q. You're talking about back when you  
15 were --

16 A. Yes.

17 Q. -- a graduate student?

18 A. Right. And I haven't pulled the name  
19 of the school yet.

20 Observations, records reviews,  
21 interviews with faculty. And we had  
22 instruments, because this was a research  
23 instrument -- institution for systematic reviews  
24 of records and observation tools that allowed us  
25 to focus on particular things and state upfront

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1 here's what we were looking for.

2 So we were trying to give the  
3 leadership, and also the faculty there, as  
4 accurate of a picture of what we saw going on  
5 with our program and make recommendations for  
6 how they might improve.

7 So program evaluation includes some of  
8 the things. And I get it, there are decisions  
9 that have to be made in limited periods of time,  
10 but that's what I would suggest would have added  
11 more credibility to some of the conclusions.

12 Q. And how large was that program in  
13 Massachusetts?

14 A. That was one school. So I -- you  
15 know, I can only ballpark. 30 to 40 students.

16 Q. And what was your process with -- so  
17 you said, again, that your report is about --  
18 mostly about being a synthesis of the research,  
19 and so what was your process, then, for  
20 synthesizing the research?

21 A. Oh. Well, I looked at specific claims  
22 about, you know, just, for example, you know, we  
23 now know that X, Y, and Z are effective and can  
24 be implemented in general ed. Like those kinds  
25 of -- and then I said well, what is the actual



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1 case of the research that you take something  
2 like functional behavior assessment.

3 And my focus was on searching for meta  
4 analyses and literature reviews that were as  
5 current as possible that also focused, if I  
6 could, primarily on kids with behavior-related  
7 disabilities and also, to the extent that I  
8 could, there were, like, three of the syntheses  
9 that were focused on functional behavior  
10 assessment in general ed settings.

11 So I'm trying to evaluate very  
12 specifically that claim that we could, for  
13 example, implement tier three or functional  
14 behavior assessment in general ed.

15 And I think that the experts were  
16 saying this is the consensus of the field and  
17 research shows, and I found something different.

18 So I would use -- I knew some of the  
19 research, but I would use key searches. I would  
20 also look at things that cited a particular  
21 reviews or reviews that it cited.

22 I used some of the process that we  
23 used to try to make sure we don't miss  
24 particular -- and in this case because it was  
25 hard to go study by study, I was mostly focused

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1 on published syntheses of bodies of research.

2 Q. And did you look for counter examples  
3 as part of your syntheses?

4 A. Yeah. I mean, -- so when you're  
5 looking at things that cite a particular review,  
6 you look at it and you see if there appears to  
7 be another review that might have, you know,  
8 found a different conclusion.

9 You also look at things that it cites.

10 And you will find, because of the  
11 nature of the complexity of these things that  
12 they're studying, they'll cite a previous review  
13 that maybe found something slightly different  
14 and they'll say okay, we're going to update that  
15 review. They may change the parameters of the  
16 review. For example, some reviews of functional  
17 behavior assessments are in any setting and some  
18 are well, we wanted to look at, you know, in  
19 general education settings.

20 So that was the process that I used.

21 You know, again, there may be a  
22 reviewer who would say, you know, maybe you  
23 should look at X, Y, and Z, but I think that I  
24 did a pretty good job finding the most directly  
25 relevant literature.

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1 I'm giving the examples of section IV,  
2 I want to say, where I was looking at, you know,  
3 what do we know about making general ed  
4 appropriate and effective for students with  
5 behavior-related disabilities.

6 Q. But you would agree that the  
7 evaluation you conducted would not have been  
8 consistent with standards in your field if you  
9 were opining specifically on the sufficiency of  
10 the GNETS program, correct?

11 A. What I think I did here was  
12 appropriate for a rebuttal report of specific  
13 claims.

14 If my task was to go and evaluate a  
15 program, then I would have used a different set  
16 of methods. Some of them would have been  
17 similar to, for example, Dr. McCart. And I know  
18 Dr. Putnam also visited some.

19 But I would have used a more  
20 structured transparent approach. That's all I'm  
21 saying.

22 Q. Understood. Thank you.

23 Let's go to page 25, please.

24 A. Yes.

25 THE WITNESS: Does it matter that

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1           that came on?

2                   THE VIDEOGRAPHER: It's okay.

3                   THE WITNESS: Okay.

4       Q.       So I'm looking at the bottom  
5 paragraph.

6       A.       Okay.

7       Q.       You wrote "The best available evidence  
8 suggests that the most effective way to address  
9 the learning difficulties of students with EBD  
10 is through intensive academic instruction.  
11 Intensive academic instruction is instruction  
12 that is delivered in small groups using  
13 specialized curricula (which, because students  
14 with EBD are below grade level, includes  
15 off-grade-level content)."

16                   Did I read that correctly?

17       A.       Yes.

18       Q.       And you don't know whether or not  
19 GNETS actually does this, correct?

20                   MS. JOHNSON: Object to form.

21       A.       I don't know. I didn't see any  
22 information that would tell me, you know,  
23 whether or not or whether some programs are and  
24 some programs aren't.

25       Q.       Okay. Again I'm trying to truncate a

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1 little bit.

2 A. Oh, that's okay.

3 Q. Let's go to page 28, please.

4 A. 28?

5 Q. Yes.

6 A. Okay.

7 Q. I'm looking at that first paragraph,  
8 and I'm actually going to start with the first  
9 sentence. You wrote "Similar to students with  
10 EBD, students with ASD" -- autism spectrum  
11 disorder -- "may need to learn functional skills  
12 that are not part of the standard curriculum,  
13 but nonetheless relevant for maximizing the  
14 success and independence of the individual  
15 student in current and future environments."

16 But you agree a functional curriculum  
17 shouldn't replace an academic curriculum,  
18 correct?

19 A. That's correct. And so currently in  
20 the field -- and I think what's true in Georgia  
21 and pretty much every other state is you have  
22 the state standards, and then you have modified  
23 standards. I think Dr. McCart mentions those.  
24 And those can be functional and also parallel  
25 the academic curriculum.

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1           There is a requirement and idea that  
2 kids access the general ed curriculum, and this  
3 is one of the ways that we do it with kids who  
4 also may need some functional instruction.

5           I'll just say that that's what the law  
6 says, that's what some folks in research will  
7 say, is that there's value in making sure  
8 there's a connection.

9           And then there are some, and I may  
10 have cited some of them somewhere, who have said  
11 that we've got to be careful not to take this  
12 exercise to a ridiculous point. Meaning that  
13 yes, to the extent that's appropriate for the  
14 individual student, they should be learning the  
15 general academic curriculum.

16           But we also have what we call an  
17 individual curriculum, which is this student may  
18 need to learn very functional skills.

19           And whether or not we make it look  
20 like it's the general ed curriculum or not, it's  
21 that they need to learn these things in order to  
22 maximum their independence.

23       Q.       Thank you.

24           I'm going to skip a sentence and then  
25 go to where you wrote "The goal of special

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1 education and FAPE for every student is enabling  
2 successful participation in the community after  
3 graduating from school."

4 How do you enable a student to  
5 successfully participate in the community after  
6 graduating from school if they're never exposed  
7 to peers without disabilities?

8 A. What is successful participation in  
9 the community is going to differ for different  
10 kids. And all of us, really. Right. So when  
11 we all graduate, we all do different things and  
12 we have to be prepared in different ways.

13 I'll say that, you know, there are a  
14 set of skills, academic, adaptive, behavior that  
15 increase your options when you graduate from  
16 school. This is true also with kids with  
17 behavior-related disabilities.

18 Kids who graduate and they've never  
19 learned, you know, how to -- you know, control  
20 their behavior, I'll just say that sort of  
21 generally, may have much more limited options in  
22 terms of employment and things like that.

23 So the focus is not so much -- and  
24 school really for all kids is kind of off  
25 Broadway in terms of society. And then society

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1 is Broadway. And you can have lots of different  
2 things that kids do.

3 But the focus on free and appropriate  
4 publication education first, what does this  
5 student need to need -- learn, what's going to  
6 benefit the most now and in the future is going  
7 to differ.

8 And I don't think that being around  
9 kids with disabilities is going to be by itself,  
10 and I don't think many people are saying that,  
11 but is going to make the turning point for now  
12 I'm ready.

13 If you're around people who don't have  
14 disabilities but you don't learn critical  
15 skills, you're not prepared for maximizing your  
16 independence and options.

17 Q. I just want to clarify. Did you mean  
18 being around kids without disabilities there at  
19 the --

20 A. Yeah. Did I say something different?

21 Q. You said with, but --

22 A. I apologize.

23 Q. No.

24 Let's go to page 28, please.

25 Page 28, please.



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1 A. I think I'm on 28.

2 Q. Oh, we are on 28. Oh, my gosh. Look  
3 at me. I lost track. Right page. Bottom of  
4 the page.

5 At the very end you say "Typically,  
6 appropriate programming for students with  
7 behavior-related disabilities will include," and  
8 you list seven different items.

9 A. Yeah. A direct quote from the  
10 publication. Yep.

11 Q. Is this whole section a direct quote  
12 from that --

13 A. Yeah.

14 Q. -- Mitchell, et al.?

15 A. I think it's page 71 of Mitchell,  
16 et al., which is one of the state of the field  
17 papers.

18 Q. Okay. And you agree that these seven  
19 items are appropriate programming for students  
20 with behavior-related disabilities?

21 A. Typically. Yeah. In different  
22 versions and different levels of intensity.  
23 That's important to note, too, because if we're  
24 going to, for some kids with behavior-related  
25 disabilities, teach them in general ed

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1 classrooms, then this has to be able to bend to  
2 some degree.

3 Does that make sense?

4 Q. Absolutely.

5 A. So, you know, there are things that  
6 are the most structured and the most intensive.  
7 And then general ed it might be sort of a  
8 variation of that. And some kids will succeed  
9 with that and some kids won't. Yeah.

10 Q. Thank you.

11 Let's discuss each of them kind of one  
12 at a time if we can.

13 A. Sure.

14 Q. Let's start with number 1. Or, no,  
15 let's say letter A.

16 "Systematic delivery and application  
17 of interventions coupled with data-based  
18 decision-making about impact and effect."

19 Let's just start with what does this  
20 mean?

21 A. All right. How did I lose this? What  
22 page is this on?

23 Q. Oh. It's the bottom of 28 going on to  
24 29.

25 A. Thank you. Oh, okay.

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1 Q. Yeah.

2 A. "Systematic delivery and application  
3 of interventions coupled with data-based  
4 decision-making about impact and effect."

5 So systematic with delivery. Again,  
6 there can be variability in degree of  
7 systematicity. I think that's a word.

8 But that it's done goal oriented in a  
9 planned way. Again, you may have a behavior  
10 intervention plan that's appropriate for one  
11 student that has some sort of general ideas  
12 about what to do.

13 But then systematic means it's goal  
14 directed and that we're going to measure  
15 progress towards that goal.

16 Q. And what about data-based  
17 decision-making? What does -- what does that  
18 entail?

19 A. So there are, again, degrees of  
20 intensity and structure, but it's the idea that  
21 we won't just intervene and hope but that we'll  
22 actually collect some data and say oh, sure  
23 enough this student is making progress.

24 Now, there are, you know, kinds of  
25 data that you might collect that aren't

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1 extremely systematic. You may just say hey,  
2 this student's having difficulties once in a  
3 while. Let's just make a note whenever they  
4 have this kind of difficulty and then look at  
5 whether or not it's decreasing.

6 Two, more systematic, including some  
7 packaged kinds of database. So in intensive  
8 academic intervention you might use a  
9 curriculum-based measure and you might  
10 administer it once every week and you might even  
11 graph it, right, and say okay, is the student's  
12 learning increasing.

13 So the notion that it's planned and  
14 goal oriented would be, I think, the systematic  
15 part. And to me that allows for real systematic  
16 versus a little bit more.

17 And the data is that you collect some  
18 data that's appropriate given the nature of the  
19 intervention.

20 Q. And so would you expect, then, that  
21 there would be either improvement or that there  
22 would be, for lack of a better word, redesign of  
23 the interventions?

24 MS. JOHNSON: Object to form.

25 Q. With data-based decision-making.

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1           A.           Right. So that's the idea, is that  
2           you don't just collect data for fun, that you  
3           actually say well, hold on a second, if the  
4           student isn't making progress, maybe we need to  
5           adjust the intervention or the support.

6                       The other thing to keep in mind with  
7           that is that, again, when you talk about -- and  
8           this is -- I didn't include this in my report,  
9           so I don't know if I'm allowed to say, I happen  
10          to be on the National Center on Intensive  
11          Intervention.

12                      We've done PBIS quite a bit and, you  
13          know, they talk about myths of intensive  
14          intervention, and one of them is that you do  
15          this and the kid gets better and that's sort of  
16          the end of the story. Unfortunately, because  
17          disabilities are lifelong typically and  
18          developmental, you may have ups and downs,  
19          right, with some students.

20                      I just wanted to make sure I say that.  
21          You adjust the intervention based on that. But  
22          understanding that, and I don't think many  
23          people think this, you just do this and then  
24          they're going to be, you know, great from here  
25          on out.

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1 Is that okay?

2 Q. Thank you.

3 A. I'm going too fast, too.

4 Slow down. Okay.

5 Q. All right. Let's go to B. "Ongoing  
6 monitoring of academic and behavioral  
7 performance."

8 Is this kind of along the same lines  
9 that we've been discussing?

10 A. Yes.

11 Q. Okay. And again, not to belabor the  
12 point, but you would expect educators to adjust  
13 what they're doing if the student's not showing  
14 improvements --

15 A. That's correct.

16 Q. -- over a sufficient period of time?

17 A. That's a component of data-based  
18 decision-making. Yeah.

19 Q. All right. C. "Provision of  
20 substantial opportunity to practice newly  
21 learned skills across relevant settings.

22 What does this mean?

23 A. So if you, you know, provide some sort  
24 of instruction or prompting for a new skill, and  
25 we can apply this to both behavior and

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1 academics, is that they have opportunities to  
2 demonstrate that skill and receive some feedback  
3 in an academic instruction in a highly  
4 structured, for example, is a more structured  
5 version, but a program.

6 Usually you're providing, the term we  
7 use is, like, opportunities to respond. So the  
8 student, you know, completes a problem or a  
9 question and the teacher provides some practice.

10 And then in academics we also try to  
11 program for transfer. So you've learned this  
12 reading skill or math skill and now you apply  
13 it.

14 And behavior. You know, you've  
15 learned a new way to deal with, you know,  
16 getting upset, and you prompt the student in  
17 the -- during the day or across their settings  
18 or activities. And so they have opportunities  
19 to practice it and they also receive some sort  
20 of effective feedback.

21 Q. And I think that's the next part of my  
22 question. What does "across relevant settings"  
23 mean?

24 A. Across relevant settings -- again I  
25 quoted someone here, but relevant to the

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1 behavioral skill or the academic. Right.

2 So let me see if I can come up with  
3 another one.

4 You know, you learn a skill where if  
5 someone cuts in front of you in line, that  
6 you'll say "Excuse me." You know, "You cut in  
7 front of me in line."

8 So it would be in that setting where  
9 you're in lines. Right.

10 So I think that what this speaks to is  
11 it's not just teaching the skill in isolation,  
12 but also making sure that you support it in  
13 relevant settings where you're hoping the  
14 student will demonstrate it.

15 Q. And that could be outside of the  
16 specialized setting. Assuming that some of this  
17 is being --

18 A. It could be --

19 Q. -- implemented --

20 A. -- inside of it. It could be outside  
21 of it. It depends on the student. And -- but  
22 opportunities to practice is an important  
23 component.

24 Q. All right. D is "intervention  
25 programs and practices matched with type and



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1 intensity of the problem."

2 Could you --

3 A. That's kind of the general -- that's a  
4 kind of a general statement, but...

5 Yeah. And, I mean, this would really  
6 fit with an IEP. Right. I mean, that you've  
7 identified the specific student problems that  
8 you're trying to address. You provide them with  
9 the appropriate type of intervention for that  
10 problem and at an appropriate level of  
11 intensity.

12 Q. And maybe I can narrow this down just  
13 a little bit for you.

14 What does it mean to be matched with  
15 type and intensity?

16 A. So with type, you know, the law  
17 requires that to the extent practicable we use  
18 research. So I would say research-based  
19 intervention that addresses the particular type.

20 So a problem that addresses a problem  
21 of social skills. A problem that addresses, you  
22 know, some sort of interfering behavior or an  
23 academic problem.

24 This is a broad statement that makes  
25 a lot of sense, but it's essentially you're not

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1 giving an intervention that doesn't target  
2 specifically that problem that the student is  
3 exhibiting.

4 And intensity. That -- so that's a  
5 nice one to talk about. Again, in terms of the  
6 National Center on Intensive Intervention,  
7 because they actually talk about intensification  
8 strategies.

9 Where I'm thinking about this right  
10 now is in terms of academics, but specifically  
11 what's talked about is you can reduce group  
12 size. That's one way to intensify academic  
13 instruction. You can give the student more  
14 opportunities to respond. Sometimes that comes  
15 with -- you know, you can make instruction even  
16 more explicit, with more modeling and more  
17 practices.

18 So there are several dimensions when  
19 we talk about intensity that apply to both --  
20 I'll just use academic and behavioral for now.

21 Frequency of reinforcement might be  
22 one for behavior. So it's a number of different  
23 variables that we look at when we talk about  
24 what is the intensity of this intervention.

25 When I'm doing classroom management

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1 and I'm talking about individualized strategies,  
2 I'll say there are some individual things you  
3 could do that are not really that much work or  
4 that intensive but they may solve the problem.

5 And from an efficiency point of view  
6 we may do that, right, and say oh, if I just  
7 move this seat, oh, the problem is solved,  
8 rather than doing something really complicated.

9 And at the same time you can be much  
10 more structured. Frequent duration. Those all  
11 dimensions that apply to intensity.

12 Q. Thank you.

13 A. Yes.

14 Q. I'm going to skip E, actually, and go  
15 to F. "Planning that specifically addressed  
16 transfer of skills across settings and  
17 maintenance of effect over time."

18 Would transfer of skills across  
19 settings be kind of like we were discussing  
20 before under --

21 A. Relevant --

22 Q. Yeah.

23 A. You're right.

24 Q. And then maintenance of effect  
25 overtime. Could you explain that one to me?

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1 A. So it's always a goal of intervention  
2 that the effects are sustained. Right.

3 So -- and, actually, it's something  
4 that I didn't touch on a lot in the functional  
5 behavior assessment literature, but maintenance  
6 is usually a part of this research.

7 Like there will be a single subject  
8 design and you'll implement an intervention over  
9 two, three weeks. And then you'll go back a  
10 month later and say did they maintain this  
11 change.

12 That's always a goal. So both  
13 generalization and maintenance of the new thing  
14 that you've taught. It's a hard thing to do,  
15 though. I mean, behavior is very responsive to  
16 the immediate circumstances. So depending.

17 You know, so there are different  
18 things that we recommend in research that will  
19 promote maintenance, but it's one of the things  
20 we have to consider. Yeah.

21 Q. And that's why you should  
22 continuously -- you. Let me be more precise.

23 That's why educators should be  
24 continuously evaluating --

25 A. That's right.

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1 Q. -- whether or not --

2 A. That's right.

3 Q. -- something's working --

4 A. That's right.

5 Q. -- or continuing to work?

6 A. That's right.

7 Q. Okay.

8 A. Yeah.

9 Q. And G. "Understanding long-term  
10 intervention may be required."

11 Is that kind of along the same lines  
12 that --

13 A. I said earlier. Yeah.

14 It's important to understand,  
15 particularly with kids with the most complex  
16 problems, that it isn't usually a one shot. You  
17 know, these kids require -- and I've worked with  
18 them, a lot of people have. But they require  
19 a lot of support. Sometimes it's lifelong, even  
20 into adulthood.

21 Q. So am I correct understanding, these  
22 seven items that we just went through reflect  
23 the types of programming that would, in your  
24 opinion, be appropriate for students with EBD?

25 A. I think that these are -- how do I

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1 keep doing this.

2 I think that they weren't even really  
3 synthesizing research, but it was sort of a  
4 synthesis of practice to say that these are the  
5 hallmarks of effective programming.

6 I don't think that they were saying  
7 that you have to have all of them or to what  
8 degree of intensity. But these are the kinds of  
9 things that -- this was the state of the field  
10 paper, is kind of what we know.

11 Q. I want to be clear. I'm not asking  
12 for your perception of what the authors of  
13 this --

14 A. Yeah.

15 Q. -- thought. Your perception --

16 A. My perception, yeah.

17 Q. -- is that -- okay. Is --

18 A. Yes.

19 Q. Please. I'm sorry. Did you just say  
20 yes?

21 A. Yeah. I'm sorry. Do you want to  
22 restate the question and make sure it's clear on  
23 the record? Okay.

24 Q. I think -- I think we're clear.

25 Thank you.

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1 Do these types of -- does this list  
2 also reflect the types of programming that  
3 would, in your opinion, be appropriate for  
4 students in the GNETS program?

5 A. These would be some of the ones that I  
6 would look at.

7 Q. And you would agree that these are  
8 appropriate steps to -- for educational bodies  
9 to consider and implement as appropriate?

10 A. In any setting. I would say for kids  
11 with EBD. And then it depends on what -- how  
12 systematic intensive it needs to be. And then  
13 setting might need to be considered.

14 Q. Assuming -- assuming that these seven  
15 categories of programming are not present in the  
16 GNETS program or in the state of Georgia, am I  
17 correct that you would support the adoption of  
18 this type of programming?

19 MS. JOHNSON: Object to form.

20 A. Yeah. I mean, I'm going to answer it  
21 because I feel bad that I keep putting  
22 qualifiers.

23 It would depend somewhat on the  
24 program and the kids that they're serving, but  
25 these are some of things -- and I also don't

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1 want to say that because I included this as an  
2 example in my report that it's the only place  
3 where you could look for a summary of, you know,  
4 hallmarks of effective programming for kids with  
5 EBD.

6 But yes, these are some of the things  
7 that I would use to look at and evaluate, again,  
8 any setting, whether you're serving a kid in  
9 general or at a special setting. Yeah.

10 Q. Dr. Wiley, in your work today do  
11 you -- are you ever on students' IEP teams?

12 A. I am not.

13 Q. Have you ever been on a student's IEP  
14 team?

15 A. Yes, I have.

16 Q. When was the last time you were on a  
17 student's IEP team?

18 A. It probably would have been when I  
19 was -- before I started my doctoral program.  
20 When I was working in schools.

21 Q. Okay.

22 A. It's pretty unusual for a researcher  
23 to be placed on an IEP team.

24 Q. Do you ...

25 Do you ever review IEPs as part of



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1 your work?

2 A. Well, I have some doctoral students  
3 who that's part of their dissertation research.  
4 And so we have redacted IEPs that they've looked  
5 at and evaluated for quality.

6 The student that I'm thinking about  
7 right now has identified -- like I was talking  
8 about, records review forms. There are a number  
9 of forms that have been used in research to  
10 objectively evaluate IEP components and things  
11 like that.

12 And the only other thing I would add  
13 is that in some of our classes we use -- now,  
14 these are not classes I teach, but our faculty  
15 all work together.

16 We have an IEP class where they're  
17 actually looking at real life IEPs to try to  
18 understand procedural and substantive components  
19 of IEPs.

20 Q. In those settings you're reviewing to  
21 IEPs for educational purposes or research  
22 purposes, correct?

23 A. Educating the preservice teachers.  
24 That would be the class example.

25 And then for research the student I'm

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1 thinking of specifically is interested in kids  
2 who are deaf or hard of hearing, and she's  
3 designing her dissertation to be an evaluation  
4 of IEPs for kids who are deaf or hard of  
5 hearing.

6 Q. And I guess my next question is have  
7 you in the last 10, 15 years reviewed a  
8 student's IEP for sufficiency or fidelity of  
9 implementation or anything along those lines?

10 A. I have not.

11 Q. Okay.

12 MR. GILLESPIE: I forget when we  
13 dropped off last time. Are we about an  
14 hour in?

15 MS. ADAMS: Yeah.

16 MR. GILLESPIE: Yeah. Let's take a  
17 break.

18 THE WITNESS: All right.

19 THE VIDEOGRAPHER: All right. Off  
20 the record, 3:44.

21 - - - - -

22 (A recess was taken.)

23 - - - - -

24 THE VIDEOGRAPHER: On the record,  
25 4:00.

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1 BY MR. GILLESPIE:

2 Q. All right. Dr. Wiley, we left off on  
3 page 29 of your report.

4 A. Yes.

5 Q. We're now on section III.

6 A. Okay.

7 Q. And am I correct in understanding that  
8 this section is generally intended to highlight  
9 limitations in the research supporting  
10 integrated placement?

11 A. Yeah. And I think that I was  
12 rebutting I think the statement -- a statement  
13 that was made by the experts, both Dr. McCart  
14 and Dr. Putnam, that research shows that  
15 inclusion -- kids achieve better outcomes in  
16 inclusion. Yeah.

17 Q. Would you agree that experience in the  
18 field can also be informative as to the efficacy  
19 or reliability of practices?

20 A. I think experience in the field with a  
21 grain of salt. Yeah, that is possible. I mean,  
22 we always have to be careful with antidotes  
23 where people will say I did this practice and it  
24 works really well.

25 Unfortunately in education there are

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1 a lot of practices that are, you know, highly  
2 questionable that people use and say oh, it  
3 works.

4 But then also -- I think the anecdote  
5 would be a concern and I think that until we  
6 rigorously evaluate a practice, then we should  
7 be careful with saying it's effective or not.

8 Q. Are there times when research lags  
9 behind practice?

10 A. When research lags behind practice.  
11 That's a great question.

12 I'd have to think about that one. I  
13 can't think of examples specific that I would  
14 point to.

15 Q. But as we discussed earlier, educators  
16 and clinicians may have to -- may have a  
17 practical need to rely on practices with  
18 imperfect support of the research, correct?

19 A. That is true.

20 Q. Okay. I'm just going to start with,  
21 actually, the title that you have for section  
22 III here.

23 A. Okay.

24 Q. It says "Research does not demonstrate  
25 that inclusion is more beneficial than other

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1 replacement options."

2 And it's not your opinion that  
3 inclusion needs to be more beneficial to be  
4 preferred to separate environments, correct?

5 MS. JOHNSON: Object to form.

6 A. I think in the individualized  
7 decision-making it does. We have to be able to  
8 say that an IEP that -- is appropriate for the  
9 student where it's best implemented.

10 And beneficial is a broad term. Most  
11 of this research looks at a number of academic,  
12 social, behavioral. Some of the research also  
13 looks at the impact on other kids, both positive  
14 and negative.

15 Q. But you would agree that if in an  
16 inclusive setting was equally beneficial to a  
17 separate setting, than the inclusive setting  
18 would be preferred, correct?

19 A. I think in that hypothetical that  
20 would be true. And that's also consistent with  
21 the law.

22 Q. Okay.

23 A. Now, I'm also assuming there that  
24 they're not -- like barely beneficial. Then we  
25 would have to rethink that.

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1 Q. Let's go to the bottom of page 32,  
2 please.

3 A. 32.

4 Q. I'm looking at that last sentence that  
5 actually will go on to 33.

6 A. Okay.

7 Q. You wrote that "The idea that the  
8 individual characteristics of students with  
9 disabilities are essential when considering  
10 placement outcomes is conceptionally consistent  
11 with the individualized process described  
12 earlier for determining the LRE as required by  
13 IDEA."

14 Did I read that correctly?

15 A. Yes.

16 Q. Once in a specialized setting, what  
17 sort of process should there be to evaluate if  
18 the placement is successful?

19 A. It's the same for an IEP regardless of  
20 where it's implemented. There has to be  
21 progress monitoring. I think that it would have  
22 to be at least progress monitoring once per  
23 quarter, but it would depend on also the nature  
24 of the IEP goals that you're measuring. So the  
25 student would have to make progress. And I'll

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1 use the language that is meaningful based on the  
2 student circumstances.

3 Q. Same page, 33. We're going to go to  
4 the last full paragraph.

5 A. Okay.

6 Q. At the beginning you wrote "Second,  
7 placement research is conceptionally flawed  
8 because this research gives insufficient  
9 attention to the actual practices used in  
10 different educational environments, i.e., what  
11 instruction and services were providing in the  
12 different placements being compared."

13 Am I correct in understanding that it  
14 is your opinion that opining on the  
15 appropriateness of a placement without  
16 consideration of the actual practices of that  
17 practice is inappropriate?

18 A. I'm saying that research that doesn't  
19 consider the actual practices is not appropriate  
20 and can't be interpreted.

21 Q. Is it also true in other context, that  
22 it would be inappropriate to opine on the  
23 appropriateness of a placement without  
24 considering actual practices?

25 MS. JOHNSON: Object to form.

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1       A.       Yeah. I mean, so appropriateness for  
2       the individual student would require you to  
3       think about the individual needs of that student  
4       and the services that are applied -- are  
5       provided through an individualized education  
6       program.

7       Q.       So you would have to consider what  
8       services are actually being provided beyond just  
9       what you're being told would be provided,  
10      correct?

11      A.       Yeah. Yes.

12      Q.       Okay. Let's go to page 34. The next  
13      page.

14               The paragraph with the bolded  
15      "Inclusive Placement" language. Just the first  
16      sentence there. You wrote "Teaching students  
17      with behavior-related disabilities in inclusive  
18      placements can be associated with negative  
19      outcomes that must be considered."

20               Isn't it true that teaching students  
21      with behavior-related disabilities in separation  
22      placements can be associated with negative  
23      outcomes?

24                       MS. JOHNSON: Object to form.

25                       MR. GILLESPIE: What's the



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1 objection?

2 MS. JOHNSON: Negative outcomes.

3 MR. GILLESPIE: It's Dr. Wiley's  
4 language.

5 A. You're talking about separate  
6 placements, and I think I'm talking about  
7 inclusive placements here.

8 Q. Correct.

9 A. I think that, again, talking about the  
10 outcomes of a place without talking about the  
11 services doesn't make a lot of sense.

12 So when you say isn't it true that  
13 separate placement can be associated with  
14 negative outcomes, well, in any case, you know,  
15 any placement can be associated with negative  
16 outcomes if the student's individual needs are  
17 not being addressed. Right.

18 And so the example here, what I'm  
19 saying, if you include students in general ed  
20 and they're not provided with the type and  
21 intensity of supports and interventions that  
22 they need, then negative outcomes can ensue.

23 Q. And I guess I'm asking -- that's true  
24 regardless of whether it's an inclusive or --

25 A. Correct.

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1 Q. -- a separate placement, correct?

2 A. Yeah.

3 Q. Okay. Let's go to page 35, the next  
4 page.

5 A. Okay.

6 Q. Paragraph "Negative academic  
7 outcomes."

8 Now, there at the beginning you wrote  
9 "Placement in general education has not produced  
10 positive learning outcomes for many students  
11 with disabilities. Despite the upward trend of  
12 students with disabilities taught in general  
13 education, students with behavior related and  
14 other disabilities persistently exhibit  
15 unacceptably low academic achievement."

16 Do students with EBD not exhibit  
17 unacceptably low academic achievement in  
18 separate settings?

19 A. Some do and some don't. Right.

20 Q. And that's also true for students with  
21 disabilities taught in general education,  
22 correct?

23 A. That is true. And so I want to say a  
24 couple things really quickly here. Oh, I did  
25 cite Gilmour, et al. That would be a good

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1 example of a recent meta-analysis where they  
2 combined a lot of research on grade level of  
3 kids with disabilities that had some breaking  
4 out of kids with behavior disabilities.

5 And so in general what we're saying is  
6 independent of placement, we ought to be  
7 concerned about the academic achievement of kids  
8 with EBD.

9 The other asterisk that I have to put  
10 on this is when people say, like, so what should  
11 we expect? What would be acceptably low? And I  
12 think it would be wrong to say that we would  
13 expect every kid with a behavior-related  
14 disability to be on grade level. Okay.

15 But really what's baked into this part  
16 and the research that I'm citing is that we  
17 could do better if we made sure to provide these  
18 kids with best available evidence, academic  
19 instruction. And mostly that's intensive  
20 instruction.

21 Does that make sense?

22 So I am trying to respond to, you  
23 know, your statement can negative outcomes be --  
24 and maybe I'm not saying it right.

25 Can separate placements be associated

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1 with negative outcomes. Is that where we  
2 started? I'm sorry.

3 Q. So -- no. No. You're -- actually,  
4 here you're talking about -- you know, the  
5 language you used --

6 A. Right.

7 Q. -- of unacceptably low academic  
8 achievement.

9 A. Yes. Yes. Okay.

10 Q. And --

11 A. Does that occur in special placements?

12 Q. That's -- yeah.

13 A. It can.

14 Q. This statement that you have here  
15 applies to both students in general education  
16 and students in separate placements, correct?

17 A. It can apply, yes.

18 Q. Okay. In the studies that you cite in  
19 this paragraph of your report, do you know if  
20 they account for whether students in general  
21 education were receiving appropriate timely  
22 supports and services?

23 A. So the research that I'm citing here,  
24 again, is a meta-analysis or a synthesis. I  
25 don't know that first -- I know you're not

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1 saying this. You're saying services.

2 I'm not sure that settings was used as  
3 a moderator variable to look at differences in  
4 academic achievement. I would have to look at  
5 that again.

6 I don't think that in this synthesis  
7 they were looking at the services that were  
8 provided.

9 And one of the things that I would  
10 underline here, because I didn't see much in  
11 Dr. McCart and Dr. Putnam's reports about  
12 intensive academic instruction. I think there  
13 was mention of things, like, being exposed to  
14 the general curriculum and universal design for  
15 learning.

16 When we talk about -- it's really  
17 important that we are clear about -- oh, I'm  
18 sorry -- what are appropriate academic supports  
19 if we were to look at this meta-analysis.

20 And, again, the best available  
21 evidence we have is that, first of all,  
22 universal design for learning is popular, but we  
23 do not have research to suggest that it will  
24 meet these kids' needs in general ed or  
25 anywhere.

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1                   And that we also need to be clear  
2                   about what does work for accelerating the  
3                   academic achievement of kids with  
4                   behavior-related disabilities.

5                   So you're right. I don't think that's  
6                   in there, but I would say it's really important  
7                   to be clear about what those services ought to  
8                   be.

9           Q.           Understood.

10                   Let's go to page 37, please.

11                   I won't read the whole thing, but in  
12                   this footnote you reference speaking with  
13                   Dr. Holifield and Ms. Cole and Ms. Morris about  
14                   parents' feelings about GNETS.

15                   And my question is, did you ask to  
16                   speak with anyone who felt differently about the  
17                   GNETS program?

18           A.           In that conversation or at all?

19                   Just at all.

20           Q.           At all.

21           A.           I did not ask to speak to anybody who  
22                   felt differently. Again, I had topics in mind  
23                   for these conversations and I didn't have any  
24                   presumptions about what they would say. I had  
25                   those terrible notes with my topics, and I think

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1 I made note of what I was told by these  
2 different people.

3 Q. I think we covered this, but it would  
4 have been this morning.

5 Did you ask to speak with anyone that  
6 you didn't get to speak with?

7 A. No.

8 Q. Okay.

9 A. I had no request denied, if that's  
10 what you're describing, --

11 Q. Yes.

12 A. -- I'd like to talk to.

13 Yes, that's true.

14 Q. Did you ask if there were some parents  
15 who felt differently than what you describe  
16 here?

17 A. I did not ask that question, and I  
18 didn't know that that would be a realistic ask,  
19 to be able to speak to parents and also to be  
20 able to -- I mean, I'm saying that now, but --  
21 you know, when I think about it, but I think it  
22 didn't occur to me because I didn't know that  
23 that might be something that I would be able to  
24 do in my capacity as an expert witness.

25 So instead I talked to some folks that

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1 have worked in GNETS.

2 Q. You're not purporting to be -- to  
3 provide expert testimony on what parents do or  
4 do not feel about the GNETS program, correct?

5 A. I am not, but can I say one other  
6 thing? I know I'm doing this and I'm -- you  
7 know, it was interesting to me to read the ADA  
8 language about whether or not students with  
9 behavior-related disabilities would object to  
10 being placed in general education. Right. I  
11 sort of got that right.

12 And I think it's interesting because  
13 what that means within a school-aged kid with  
14 disabilities in the IEP process -- I'm not  
15 saying that there are -- like, the IEP process  
16 is not -- is always perfect. So I'm not using  
17 that as a perfect proxy for parents expressing  
18 what they wanted.

19 But they are required to be part of  
20 the IEP process, including the placement  
21 decision, and I just wondered -- I'm not going  
22 to say anything that's a conclusion about that  
23 except how does that work when you say what is  
24 the preference of the student when you have this  
25 IEP process where the parent is supposed to have



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1 input into the IEP and the placement decision.

2 So that's not talking to the parent.

3 So I know that's way off topic, but I want to  
4 say it out loud because it is a thought that  
5 occurred to me as I was looking at the case and  
6 the expert reports.

7 Q. Dr. Wiley, would it concern you to  
8 learn that there are parents who have gone so  
9 far as to move out of the state of Georgia to  
10 keep their kids from being placed in the GNETS  
11 program?

12 A. In a hypothetical it would concern me.  
13 I would want to know some more of the details,  
14 of exactly what went on that that happened.

15 But I think that any time people are  
16 that unhappy with any educational program that  
17 we're off the track. Right.

18 Q. Would it concern you to learn that  
19 there are other parents who have moved out of  
20 the state of Georgia after seeing how their  
21 child was treated after being placed in a  
22 regional GNETS program?

23 MS. JOHNSON: Object to form.

24 A. And again it's a hypothetical. I  
25 think that it -- that would concern me.

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1                   And the other thing that I want to  
2                   say, I'm sorry, is that my focus would be on how  
3                   do we make sure that that program is better,  
4                   better resourced and supported to do work that  
5                   parents would be happy with.

6                   That's all hypothetical. I don't know  
7                   what actually happened in any of those cases.

8           Q.           Let's go to section IV of your report,  
9                   which begins on page 38.

10          A.           Okay.

11          Q.           But just generally speaking, in this  
12                   section of your report, am I correct in  
13                   understanding that your overall critique is that  
14                   the United States' experts did an insufficient  
15                   job acknowledging limitations in the research  
16                   around the supports and services you discuss?

17          A.           I would say that in their statements  
18                   and conclusions, yes, they didn't do a  
19                   sufficient job looking at limitations.

20          Q.           And these limitations that you  
21                   acknowledge in this section apply regardless of  
22                   setting, correct?

23          A.           Well, some of the research that I  
24                   reviewed was specific to general education,  
25                   because that's the specific claim, is that we

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1 now know what's effective when we implement it  
2 in general education.

3 In some cases I talked about generally  
4 effective practices or promising practices that  
5 would be independent of setting.

6 But I did have a particular attention  
7 on, for example, functional behavior assessment  
8 implemented in general education settings. I  
9 think I reviewed three recent meta analyses.

10 Q. So let's go to page 39.

11 A. Okay.

12 Q. I am looking at that bottom paragraph.

13 A. Okay.

14 Q. Sir, the first sentence you wrote "The  
15 claim that we now know how to appropriately and  
16 effectively include the 'vast majority' of  
17 students with behavior-related disabilities in  
18 general education environments is inconsistent  
19 with current gaps in and weaknesses of the  
20 relevant research."

21 Again, based on the data that you  
22 cited in table 2, is it your professional  
23 opinion that the vast majority of students with  
24 behavior-related disabilities are being  
25 inappropriately educated in general ed

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1 classrooms some or all of the time?

2 A. We have the indirect evidence that I  
3 think I referred to earlier that -- the outcomes  
4 we talked just now about, academic, but also  
5 post school outcomes, which would suggest that  
6 we probably ought to be doing better.

7 And the fact that 80 percent of these  
8 kids are in general ed but they still have high  
9 dropout rates, high arrest rates, mental health  
10 problems after they graduate, difficulty being  
11 employed, I didn't cite that research, but of  
12 all the kids with disabilities, it's kids with  
13 behavior-related disabilities that appear to be  
14 at the highest risk for those outcomes.

15 Now, for me to draw very specific  
16 conclusions about where are they being  
17 appropriately served and where are they not,  
18 that's tough, but we have to be able to say what  
19 do we know about appropriately, effective  
20 serving these kids and what do we know about  
21 whether or not general education, for example,  
22 is implementing it when we're talking about the  
23 question of including the vast majority of  
24 students with behavior-related disabilities.

25 Q. Does the research in the field show

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1 that academic outcomes are superior in separate  
2 settings?

3 A. The -- again that goes to the  
4 placement research. And what I said sort of at  
5 the beginning of the next section is we can't  
6 use the placement research to say something  
7 about general ed and we can't say it to say  
8 something about separate placements, because of  
9 the flaws in how those studies are designed and  
10 also the fact that they don't consider  
11 individual characteristics and the practices  
12 that are actually implemented.

13 Q. So is it fair to say that no, the  
14 research does not show that academics --  
15 academic outcomes are superior in separate  
16 settings?

17 MS. JOHNSON: Object to form.

18 A. It doesn't show that they're superior  
19 or inferior.

20 Q. Fair.

21 A. Okay.

22 Q. Let's look at the next sentence. You  
23 wrote "The consensus of the field is that more  
24 research is needed to understand how best to  
25 serve students with behavior-related

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1 disabilities, particularly those with the most  
2 intensive needs."

3 In light of this need for more --  
4 actually, let me withdraw that.

5 You know what, actually, I think we  
6 covered this earlier.

7 A. Okay.

8 Q. We're going to skip that.

9 Let's go to page 41, please.

10 A. Okay.

11 Q. And the first full paragraph with the  
12 bolded "Limitations of services."

13 A. Okay.

14 Q. Your first sentence was "Placing the  
15 'vast majority' of students with  
16 behavior-related disabilities in general  
17 education cannot be done ethically and  
18 responsibly without addressing the limitations I  
19 discuss below."

20 Is it your opinion that placing the  
21 vast majority of students with behavior-related  
22 disabilities in separate settings can be done  
23 ethically and responsibly without addressing the  
24 limitations in your report?

25 A. Oh, that's an interesting phrasing.

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1 Let me -- let me make sure I get my head around  
2 it.

3 Placing students in separate settings.  
4 You're asking me whether I can think that that  
5 can be done ethically and responsibly without  
6 addressing the limitations I discussed below?

7 Q. You make this -- you have this  
8 conclusion, this summary statement here --

9 A. At the beginning of this discussion.

10 Q. Yeah. And I'm trying to say are you  
11 drawing a distinction between the applicability  
12 of this conclusion to separate settings.

13 Can students be placed, the vast  
14 majority of students with behavior-related  
15 disabilities, be placed in separate settings  
16 ethically and responsibly without addressing  
17 those limitations?

18 A. So the first thing I would say is that  
19 I was responding to the expert reports stating  
20 this, that we are now ready and able to teach  
21 these students in general ed. So that was  
22 primarily my focus.

23 And then I would say in terms of, you  
24 know, ethically and responsibly educating,  
25 right, independent of placement, students with

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1 behavior-related disabilities requires us to  
2 push what we know about effective practices and  
3 how to implement them.

4 Just like in the law, I think the  
5 setting is sort of the next question. I think  
6 that we have a responsibility, it's an ethical  
7 responsibility and a professional  
8 responsibility, to try to provide the most  
9 effective special education that we can to these  
10 students.

11 I think that there are instances  
12 that -- we have examples that I cite in the next  
13 section -- where they have been taught  
14 responsibly and ethically. And so we know that  
15 it can be done.

16 I also think that's true of general  
17 education. I think the important additional  
18 factor when we say both of those things, it's  
19 possible under some circumstances to  
20 responsibly, and, you know, in both general and  
21 separate placements. It depends on the  
22 individual student and what they need.

23 Q. But in both settings in order to  
24 ethically and responsibly place the students  
25 with behavior-related disabilities in those



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1 settings, you would need to address the  
2 limitations that you outline in this section,  
3 correct.

4 A. I think that we have to address the  
5 limitations of providing special education  
6 that's appropriate and effective, regardless of  
7 setting.

8 And, yes, I'm not letting special  
9 placements off the hook in that sense. I used  
10 an analogy at some point of, you know, placement  
11 and thinking about medicine and outpatient  
12 versus emergency rooms. Right. And I think  
13 that across all of those medical settings we  
14 want to make sure that we're using the best  
15 available treatments. Right.

16 Q. Sure.

17 A. And it's the same thing. But we also  
18 understand that there are going to be some  
19 patients and some treatments that are going to  
20 be most effectively delivered in a particular  
21 setting.

22 So it's hard to disentangle all of  
23 these things, which I think, you know, you  
24 understand generally my perspective on that.  
25 But I do think that we have a responsibility to

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1 try to figure out how to maximize the  
2 appropriateness of effectiveness of services  
3 across all settings.

4 Q. Is it your position that while the  
5 research is still in development that the  
6 default should be that students with  
7 behavior-related disabilities are being served  
8 in separate settings or specialized settings?

9 A. Default, no. I think that decision  
10 needs to be made on an individual basis.

11 Q. Let's go -- let's jump ahead a little  
12 bit --

13 A. Okay.

14 Q. -- to 53.

15 A. All righty.

16 Q. Oh, actually, you know what. We're  
17 going to do 51 first.

18 A. Okay.

19 Q. Yeah.

20 All right. At the bottom of page 51,  
21 the last sentence that goes on to 52, you wrote  
22 "A major barrier to tier three implementation is  
23 the failure to specify, validate, and  
24 disseminate the necessary and sufficient  
25 technologies (training, guidance, materials)

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1 required for high-quality implementation of  
2 FBA-based interventions under typical classroom  
3 conditions."

4 Did I read that right?

5 A. Yes.

6 Q. And you would agree that failure to  
7 provide training would be a major barrier to  
8 successful implementation of tier three PBIS,  
9 correct?

10 A. And I'm just making sure that I say --  
11 this is tier three, again, independent of  
12 setting.

13 Yes. Training is one of the critical  
14 components of implementation.

15 Q. And, likewise, guidance is a critical  
16 component of --

17 A. Yes.

18 Q. -- implementation of tier three of  
19 PBIS, correct?

20 A. Tools, materials, training. What I  
21 collectively refer to as the technology of  
22 implementation.

23 Q. And would you agree that receiving  
24 quality training with fidelity is critical to  
25 enable school personnel to develop effective

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1 FBAs?

2 A. So you're saying that the training has  
3 fidelity or you're saying training to implement  
4 with fidelity?

5 Q. Let's say both.

6 A. All right. Yeah. It's a great one  
7 that you bring up, because people -- obviously  
8 we have a national technical assistance center.  
9 We have all kinds of different aspects of  
10 training.

11 But training is a challenge itself.  
12 Right. Figuring out what's the right amount,  
13 who delivers it, what's the format.

14 So when I say we need to sort of field  
15 test training -- I think that people do  
16 wonderful work, by the way, you know, in these  
17 things, but we don't really -- we can't really  
18 demonstrate what is sufficient training, what is  
19 adequate training, what are all of the elements  
20 that are required for it to ...

21 And, by the way, this is an in-service  
22 and preservice. I think in this case there's  
23 been a lot of discussion about can Georgia  
24 train, you know.

25 But I also think preservice has to be

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1 looked at very closely. I think that if our  
2 goal is to -- is high quality or high fidelity  
3 implementation, we have to do many, many  
4 different things in how we train, for example,  
5 general education teachers, if they're going to  
6 play a role. We need to make changes to teacher  
7 education and how functional behavior assessment  
8 is trained.

9 And then, you know, the other part of  
10 it is to say yes, functional behavior assessment  
11 in tier three, recognizing that training isn't  
12 the only barrier.

13 So my point throughout the report has  
14 been there are implementation barriers that are  
15 related to setting, and that's why we have the  
16 continuum of alternative placements. Or one of  
17 the reasons.

18 Does that make sense?

19 Q. That does. Thank you.

20 A. And if you don't read anything else,  
21 this paper by Pogrow is a really interesting  
22 one. And it's about education reform and what  
23 it really takes. Anyway.

24 Q. I appreciate the recommendation.

25 A. I apologize.

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1 Q. No.

2 Let's go to page 59, please.

3 A. Okay.

4 Q. Let's look at that full paragraph  
5 there in the middle.

6 We discussed some of this already. So  
7 you wrote "There is nothing about the  
8 requirements of IDEA and the existence of the  
9 continuum of alternative placements that  
10 prevents or impedes efforts to reform general  
11 education to be more appropriate and effective  
12 for students with behavior-related  
13 disabilities."

14 And this is what we were talking about  
15 earlier today that you're in support of,  
16 correct?

17 A. I'm in favor of the continuum of  
18 alternative placement as currently required. Is  
19 that what you mean?

20 Q. Well, actually, I was looking at the  
21 reforming general education to be more  
22 appropriate and effective for students with  
23 behavior-related disabilities.

24 A. Am I in favor of that? Is that what  
25 you're asking?

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1 Q. Yes.

2 A. The answer is yes. Yes.

3 Q. Okay.

4 A. I mean, my focus is special education  
5 wherever it's delivered.

6 Q. And then the next sentence says "To  
7 the extent that such efforts are successful,  
8 responsible inclusion of more students with  
9 behavior-related disabilities will follow."

10 And so you're saying if that capacity  
11 is built and that competency is built in general  
12 education, that will naturally result in more  
13 inclusion; is that correct?

14 A. And I use the term "responsible  
15 inclusion" very deliberately there, which means  
16 that it's placement where their needs are  
17 addressed.

18 Q. That's a situation where I want to  
19 make sure I get the answer before the  
20 explanation.

21 A. Oh. Do it again. I'm sorry.

22 Q. No, you're good.

23 And so I just want to make sure that  
24 I'm correct, that you're saying that if the --  
25 if the capacity and the competency is built in

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1 general education, that the natural result will  
2 be that there's more inclusion of students with  
3 disabilities?

4 MS. JOHNSON: Object to form.

5 A. I mean, I'm not being difficult, but  
6 I'm just saying that we've already seen  
7 increased inclusion of kids with ED. That was  
8 the Williamson study from before.

9 So when I say responsible inclusion, I  
10 mean they're going to -- the capacity -- and so  
11 the capacity is really what you're describing,  
12 which is do they have the capacity to deliver  
13 with fidelity the kinds of services appropriate  
14 to the individual kids.

15 So in that sense I would say yes, if  
16 those -- that's what I think is the correct way  
17 of thinking about improving general education  
18 and promoting responsible inclusion.

19 Q. Thank you.

20 A. Sure.

21 Q. Let's go to section V, which is the  
22 next -- begins on the next page.

23 A. Okay.

24 Q. And earlier you said that it's not  
25 your opinion that separate placements are



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1 inherently superior to more integrated  
2 placements, correct?

3 A. Correct. In terms of student  
4 outcomes, yes.

5 Q. And is it fair to say that your  
6 opinion in this section is summarizing academic  
7 research that you believe supports the use of  
8 separate placements for some students some of  
9 the time?

10 A. I'm also rebutting the claims.

11 Q. Sorry. Is that a "yes" first?

12 A. Yes. I think it's a yes. Sorry. I  
13 got to get better at that. My apologies.

14 Say it again.

15 Q. So am I correct that your opinion in  
16 this section is summarizing the research that  
17 you believe supports the use of separate  
18 placements for some students some of the time?

19 A. Yes. Probably not all of it, but what  
20 I thought was key research to demonstrate the  
21 point.

22 Q. Even for the students that you think  
23 can be served in separate placements or should  
24 be served in separate placements, would you  
25 agree that whether a separate placement is

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1 preferable to a more integrated placement would  
2 depend on if the student is receiving the  
3 quality and scope of supports and services they  
4 need?

5 A. Yeah. To me job number one is  
6 providing the services that the kids need.

7 Q. Wherever it is?

8 A. Wherever it is.

9 And then, you know, if the IEP team  
10 determines that specialized placement is  
11 required to implement that IEP.

12 But always -- and I say this somewhere  
13 where I soapbox, and I apologize, but I think  
14 that we've sort of forgotten to make that job  
15 number one.

16 Q. At various points in your report you  
17 refer to students in GNETS as the students with  
18 the most complex and extensive needs, with the  
19 most intensive needs, with the most intensive  
20 behavior problem -- or problem behaviors, and  
21 with the most severe impairments. Is that  
22 generally consistent with your understanding?

23 MS. JOHNSON: Object to form.

24 A. So when I'm referring to students with  
25 the most complex needs that -- I think that that

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1 would likely apply to students who are served in  
2 GNETS, yeah. I mean, I would speculate that  
3 that's true.

4 The only -- that -- I would expect  
5 that there would be some correspondence between  
6 specialization of setting and intensity of need  
7 and complexity of need when kids are not able to  
8 be appropriately served in general. That's  
9 often the factor. Right.

10 I'm only giving you that look that I  
11 have something else to say because there can be  
12 variability geographically essentially.

13 Some of my early research in  
14 Massachusetts looked at context and that  
15 sometimes you had kids with much more intensive  
16 needs, let's say, for example, in low income  
17 districts.

18 And -- anyway. So I'm just going to  
19 add that bit of a context, that there can be  
20 some variation, but I would expect to be  
21 generally their correspondence between  
22 specialization of placement and intensity of  
23 needs.

24 Q. Thank you.

25 A. Yeah.

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1 Q. I'm going to take you to page 63.

2 A. 63?

3 Q. Yes.

4 A. Okay.

5 Q. I'm going to jump around a little bit,  
6 so bear with me. Okay?

7 A. Sure.

8 Q. So in the bolded paragraph, --

9 A. Okay.

10 Q. -- the first sentence, you wrote  
11 "Research on separate schools for students with  
12 behavior-related disabilities is somewhat  
13 limited," and then I'm going to take you to the  
14 next page first.

15 A. Okay.

16 Q. The bottom of that first incomplete  
17 paragraph.

18 A. 64?

19 Q. Yes.

20 A. Okay.

21 Q. You wrote "more rigorous research on  
22 separate schools is also necessary."

23 Do you see that?

24 A. Uh-uh. Which -- I'm sorry. Which  
25 paragraph?

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1 Q. This is the first paragraph.

2 A. Oh.

3 Q. Last clause there.

4 A. Right.

5 Q. Okay. And then on page 59, if we can  
6 go back.

7 A. Okay.

8 Q. In the middle of the paragraph we were  
9 talking earlier, you wrote "It is irresponsible  
10 and unethical to insist that all or nearly all  
11 students with behavior-related disabilities" can  
12 "be placed in general education before  
13 limitations of evidence and implementation have  
14 been satisfactorily addressed."

15 Did I read that right?

16 A. Uh-huh.

17 Q. So, Dr. Wiley, in your opinion why do  
18 the limitations and the evidence and  
19 implementation need to be satisfactorily  
20 addressed before students are placed in  
21 inclusive environments but does not seem to be  
22 the case for placing students in separate  
23 environments?

24 MS. JOHNSON: Object to form.

25 A. Yeah, the limitations have to be

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1 addressed. That's how the field make progress;  
2 limitations of evidence. We need more research  
3 and better research in general. Implementation.  
4 So when we identify effective practices,  
5 figuring out how to implement them.

6 But I first started that -- I get  
7 what, you know, kind of you're saying -- by  
8 saying that if somebody were to kind of swoop in  
9 and say hey, you know, we know enough, it's  
10 time -- and this is a little bit how I  
11 interpreted some of the conclusions in the  
12 expert reports. We know what to do. Let's go  
13 ahead and do it. That that on its own would be  
14 unethical.

15 I think there's an ethical duty in  
16 separate schools to conduct more rigorous  
17 research to understand how to implement  
18 effective programs for those kids as well.

19 So in a sense I'm saying for both that  
20 is an equal concern. You know, but right now,  
21 given the limitations and the gaps that we need  
22 to fill, we need to have all of the options  
23 available to us on an individualized basis.

24 I would never make a categorical  
25 statement about which percentage, for example,

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1 what we mean by "nearly all" or "vast majority."

2 I think that that's unethical. I think we have  
3 to go student by student and we have to  
4 recognize, like, here are the limitations.

5 We have to sort of operate within  
6 reality when we make individualized decisions  
7 about placement for kids with behavior-related  
8 disabilities.

9 Q. So is it fair to say that it's your  
10 position, then, that we shouldn't eliminate  
11 separate placements from the CAP. Correct?

12 A. That's correct.

13 Q. You're not saying that there's more  
14 support for separate placements or better  
15 support for separate placements than more  
16 inclusive placements, correct?

17 A. I am not saying that. That whole  
18 section of the research on placement is sort of  
19 my -- what I'm saying I understand the research  
20 to be.

21 Q. You're not giving it an expert opinion  
22 that one or the other is preferable, correct?

23 A. About the research. I think I was  
24 responding to the expert claim that we now know.  
25 And I think it was stated in various forms. So

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1 that was my response to the claim by the experts  
2 that there's a consensus or that research has  
3 documented those different statements.

4 Q. Okay.

5 A. Yeah.

6 Q. But, again, I guess just to make sure  
7 that I'm clear, your -- your position is in  
8 favor of keeping those separate placements as an  
9 option?

10 A. A continuum, yes.

11 Q. Okay. Thanks for bearing with me on  
12 that.

13 A. No. That's okay.

14 And, you know, when I brought up best  
15 available evidence, it was to say that, you  
16 know, there is -- the other reality is that we  
17 are making these decisions without perfect  
18 knowledge or perfectly developed practices.

19 But across settings, again, I think we  
20 should be putting to close those gaps and to  
21 make sure that we are able to be responsive to  
22 all of the individuals needs of this really  
23 vulnerable population.

24 Q. Let's -- I'm getting really close to  
25 the end here.



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1 A. Oh, that's okay. I'm not pushing you.

2 Q. We can go longer if you want,

3 Dr. Wiley.

4 MR. GILLESPIE: Let's take -- let's  
5 take a quick break here --

6 THE WITNESS: All right.

7 MR. GILLESPIE: -- and wrap up.

8 THE VIDEOGRAPHER: Off the record,  
9 4:40.

10 - - - - -

11 (A recess was taken.)

12 - - - - -

13 THE VIDEOGRAPHER: On the record,  
14 4:52.

15 BY MR. GILLESPIE:

16 Q. So, Dr. Wiley, we talked about this a  
17 little bit earlier today, but generally  
18 speaking, how important is it for students with  
19 behavior-related disabilities who are in  
20 separate placements to be reevaluated regularly  
21 for more integrated placement?

22 A. That should be part of the process.

23 And I think -- I'm not sure whether  
24 it's in regulations or it's just considered like  
25 a best practice, is -- like an annual

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1 reevaluation.

2 I don't know that the exact components  
3 of that are spelled out somewhere. They may be.  
4 I think that there are a few guides out there  
5 for how to do that, yeah.

6 Q. And would it concern you if that was  
7 not happening within a separate placement?

8 A. If that wasn't happening, I would say  
9 it should be.

10 Q. Earlier today we talked about  
11 self-contained classrooms a bit, and I just had  
12 a quick follow up on that.

13 A. Okay.

14 Q. Are there any services and supports  
15 that cannot be offered in a self-contained  
16 classroom but could be offered in a separate  
17 school?

18 A. Supports that cannot be offered in  
19 self-contained but could be offered in a  
20 separate school.

21 Well, I think that -- again I'm just  
22 going to use my examples. You know, I was in a  
23 Center program in Fairfax County that I think I  
24 said in my -- was attached to an elementary  
25 school. And we had many special spaces.

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1                   One of them was our own gym. One was  
2                   our own music and art room.

3                   We also had a room that I often worked  
4                   in as a crisis resource teacher. We called it  
5                   the get room, which stood for get everything  
6                   together. And so when kids were in crisis, I  
7                   would sometimes provide support to the  
8                   classrooms.

9                   So those are some of the kinds of  
10                  things that you would see at separate schools in  
11                  terms of special facilities and configurations  
12                  that you would not necessarily have in a  
13                  self-contained classroom.

14           Q.           And -- sorry. In that example you're  
15           referring to having your own gym and other  
16           facilities like that?

17           A.           Yeah. Dedicated spaces for various  
18           things. That one classroom in a general ed  
19           school, you may or may not have access to those  
20           things. So I think there are some things about  
21           separate schools that enable some things above  
22           and beyond a self-contained classroom.

23           Q.           Is there anything else?

24           A.           You said services and supports.

25                        I think at different levels of

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1 intensity, I think, that there may be  
2 differences between self-contained.

3 You know, let me give the example of a  
4 student who may need frequent crisis support.  
5 You know, they may engage in, you know, loud or  
6 potentially really aggressive behavior. And  
7 that may be both not really dignifying for the  
8 students themselves but also potentially  
9 disruptive in a school.

10 So I don't know if I'm giving a good  
11 example. You're making me pull them out of my  
12 head. But that may be different in a special  
13 school versus a self-contained classroom.

14 Q. But, I guess, -- I want to have an  
15 understanding.

16 Is there anything that a separate  
17 school can provide that a self-contained  
18 classroom could not offer? And I hear your  
19 point on facilities, but I'm just --

20 A. Yeah.

21 Q. Is there anything else that --

22 A. And I think that you're talking about  
23 services when you say "provide."

24 Q. That's right.

25 A. And I think that, again, when we

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1 talked about what would be hallmarks of  
2 effective programming for behavior-related  
3 disabilities, you may be better able to apply  
4 them at a level of structure across all settings  
5 and also a level of intensity across all  
6 settings in a separate school.

7 And, you know, we talked about this as  
8 well. In that continuum when we think about a  
9 special school or a separate school, that having  
10 that option for some kids who need it can almost  
11 prevent them from even more restrictive  
12 settings.

13 So when I talked about that old 1950s  
14 example, when you take apart that continuum and  
15 you really only have general ed, and then, you  
16 know, let's say residential, you've lost the  
17 whole notion of continuum of inclusion really.

18 And being in a separate school that's  
19 not a residential facility can be thought of as  
20 being more inclusive than a hospital or  
21 residential facility.

22 You're probably familiar, but I just  
23 want to make sure I say that out loud. Yeah.

24 Q. Thank you.

25 Dr. Wiley, did -- you didn't review

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1 any materials related to GNETS funding, correct?

2 A. Only some of the things that were in  
3 the reports, which I think were some summaries  
4 of those things. I think I saw some numbers in  
5 terms of annual budgets, but it wasn't obviously  
6 a major part of my rebuttal.

7 Q. Okay. And earlier today we talked a  
8 bit about separate placements, and I want to  
9 make sure I'm -- we talked a lot about separate  
10 placement. That didn't really narrow it down.

11 A. Right.

12 Q. About whether or not unnecessary  
13 placement and separate placements could be  
14 harmful to students. And I want to make sure  
15 I'm clear on this.

16 Is it your testimony today that in no  
17 circumstances can separation from peers in an  
18 education setting be harmful to result in  
19 adverse consequences for students?

20 A. I think there is a possibility -- and  
21 let me give an example.

22 I don't think I cited the research,  
23 but there's some research that hasn't been  
24 updated, and it was about let's give the example  
25 of self-concept of kids with disabilities in

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1 kids who were taught -- provided those services  
2 mostly in general education.

3 I think mostly in the research I'm  
4 talking about it would be self-contained  
5 classrooms, for example.

6 And there were some kids who felt  
7 stigmatized by having to leave the classroom to  
8 go to their resource room or self-contained.

9 And then there were some kids who were  
10 quite the opposite. They felt stigmatized  
11 struggling to read in a general ed classroom.

12 So the harm of teaching students in  
13 separate placements, that might be an example  
14 where for some kids it's possible that they  
15 might have a negative self-concept or experience  
16 stigma from being placed.

17 So I will say that, yeah, I could  
18 imagine circumstances.

19 But the other thing that I would say  
20 is with any decision, whether it's inclusion or  
21 self-contained classroom or separate placement,  
22 there probably may be some downsides and  
23 potential negatives.

24 But we also may need to look at it  
25 more holistically and say yeah, it's unfortunate

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1 that the student -- my example -- may feel  
2 stigmatized by being in a separate school, but  
3 considering all the other problems that we have  
4 to address, it's almost like thinking about it  
5 is going to sound like a side effect. Right.

6 So you take a medication, you know  
7 there's side effects, but overall -- that also  
8 applies to inclusion.

9 Sometimes we say hey, there are some  
10 downsides to being in general education, but  
11 maybe the net positive determined by the IEP  
12 team we say that's okay.

13 And I think you were asking some of  
14 that a little bit earlier. Like do we have to  
15 have -- do we have to focus on the best outcome  
16 or can we balance between. Yeah, there's a  
17 little give and take to a particular setting.

18 Again, I believe in the idea that  
19 that's for the IEP team to determine. And I  
20 think that they ought to be helped to think  
21 about all of these things. Right. And to the  
22 extent they have research that can inform their  
23 judgment or professional expertise or all  
24 different kinds of sources.

25 But I hope that that helps.



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1                   So I wouldn't say that there's no  
2 possible downside to being placed in a separate  
3 classroom or school.

4           Q.           Thank you. That is helpful.

5           A.           Yes.

6                   MR. GILLESPIE: What number are we  
7 at?

8                   COURT REPORTER: 984.

9                   MR. GILLESPIE: 984. Let's do it.

10                   - - - - -

11                   (Deposition Exhibit 984, The Washington  
12 Post article titled "No, special  
13 education does not treat disability like  
14 a disease and is not 'obsessed' with  
15 forcing students to conform," was marked  
16 for identification purposes.)

17                   - - - - -

18           Q.           Dr. Wiley, do you recognize this one?

19           A.           Yes.

20           Q.           What's that?

21                   What's Exhibit 984?

22           A.           I do. This was a response to --  
23 letter to the editor in The Washington Post.

24           Q.           And you authored the portion that's  
25 under your by-line, correct?

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1 A. I did with Dimitris and Jim, yeah.

2 Q. Okay. I'm just going to direct your  
3 attention to one really small part, actually.

4 A. Okay.

5 Q. I don't have a lot of questions about  
6 this.

7 But on the second page, the very  
8 bottom.

9 A. Okay.

10 Q. Last sentence. You wrote "Pointing  
11 out instances of special education practiced  
12 badly is one thing; condemning the whole  
13 endeavor is quite another;" --

14 A. Okay.

15 Q. -- is that right?

16 A. I didn't find it. I'm sorry. Did you  
17 say it was the last paragraph of the second  
18 page?

19 Q. Yeah. It's the very last line of the  
20 second page.

21 A. Oh. That's makes it easier.

22 Q. Yeah.

23 A. Okay.

24 Q. So "Pointing out instances of special  
25 education practiced badly is one thing;

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1 condemning the whole endeavor is quite another."

2 A. Okay.

3 Q. You wrote that?

4 A. Yes.

5 Q. And --

6 A. With my co-authors, yeah.

7 Q. Okay. What do you mean by "special  
8 education practiced badly"?

9 A. I think that it just means that  
10 students are provided or not provided services  
11 and supports that they need.

12 And, you know, the point would be --  
13 you can apply it to any profession. Law. We  
14 won't do that one. Medicine. Where you can  
15 say, you know, there are instances where people  
16 practice these things madly.

17 And so I would say that's, you know,  
18 any time that an individualized education  
19 program is not implemented well.

20 Q. Have you witnessed special education  
21 practiced badly?

22 A. I think that I have in my entire --  
23 from being a practitioner to also being a  
24 researcher.

25 Q. And, you know, I'm not asking for

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1 names or anything like that.

2 A. Right.

3 Q. But in what context would you say  
4 you've been exposed to special education  
5 practiced badly?

6 A. So the examples that immediately jump  
7 to mind are when I was -- actually, it was when  
8 I was transitioning from being an autism  
9 resource teacher to a behavior specialist.

10 And part of why I became a behavior  
11 specialist is I was working on a very  
12 high-profile case of a young lady with autism.  
13 And the mother was quite vocal, and had been for  
14 years, that she didn't think her child was  
15 receiving appropriate special ed services.

16 Now, in that case I'm not focusing on  
17 that student, but there were times when I went  
18 to work with that teacher and that school team  
19 and meet with a parent where I would look at --  
20 this is just one very specific example -- kids  
21 with more severe disabilities in a  
22 self-contained classroom and they spent  
23 inordinate amounts of times looking at  
24 magazines.

25 And I thought to myself that's an

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1 example of where that's not a great use of their  
2 time. So very concretely that's just one  
3 specific example.

4 If I sat here and thought for a while,  
5 I could probably -- in and that role as a  
6 behavior specialist and resource teacher, I was  
7 in a little bit of a unique position.

8 But why I think I was pretty good at  
9 that point was I didn't come in there judging  
10 everybody. I always saw it as problems to be  
11 solved.

12 Q. And, you know, this may be obvious,  
13 but in that particular example, what would you  
14 say was bad about that practice?

15 A. Well, in the times -- and again I have  
16 to be careful because I was critical of methods  
17 earlier. I was sort of their intermittently.  
18 So I developed a perception that there was a lot  
19 of time being spent. I was just saying -- you  
20 know, I didn't put on my vitae my  
21 preprofessional -- I think I mentioned one thing  
22 earlier.

23 But my mom was a speech therapist at a  
24 center for kids with severe disabilities, and  
25 what I remember about my times there is that it

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1 was just everything was happening all the time.  
2 It was an energetic place that had a lot of --  
3 and when I saw that, I would say to myself that  
4 just looks like too much sitting around and  
5 doing nothing.

6 Does that make sense? Did I answer  
7 your question?

8 Q. Yes.

9 A. Okay.

10 Q. I think you did.

11 Is special education practiced badly a  
12 concern in your field?

13 A. It -- yes. Special education  
14 practiced badly is a concern.

15 Q. Why?

16 A. It's a concern, because -- I mean, I'm  
17 thinking about there are some sort of systematic  
18 observations.

19 So when I speak from, like, the  
20 research part, I think there's examples where  
21 people have observed or done observational  
22 studies where it would be like this. Right.  
23 Where you would say these kids are not getting  
24 the kind of individualized supports that they  
25 need.

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1                   If you gave me time, I would come up  
2                   with some examples.

3                   But some of the ones that influenced  
4                   me early on were like Naomi Zigmond, University  
5                   of Pittsburgh. And she would go to blue ribbon  
6                   inclusion schools and she would observe kids  
7                   with learning disabilities included in general  
8                   ed classrooms and they weren't getting the  
9                   special support that they really needed.

10                  So there are examples of that, where  
11                  we say, you know, there is a concern that  
12                  special education may not always be practiced as  
13                  well as it can be and we should make that a  
14                  goal.

15                  More recently, in my scholarship,  
16                  where I've talked about multitiered system  
17                  support, which I am a proponent of, and, again,  
18                  I say it's a promising practice, I worry that it  
19                  takes our focus off of special education.

20                  Making general ed better is good for a  
21                  number of reasons, but -- you know, so I'm  
22                  talking about myself, but I think there are  
23                  others who would say, you know, we need to get  
24                  ourselves back on job number one, which is  
25                  making sure that special ed is practiced more

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1 uniformly in more places effectively and well.

2 Q. And what effects would you say special  
3 education practiced badly can have on students?

4 A. Yeah. I mean, -- so I think, broadly  
5 put, then kids fail to achieve their maximum  
6 potential. So all the things that I talk about,  
7 you know, why participation and instruction and  
8 the benefits of learning are so important in  
9 education is it gives you choices. It gives you  
10 independence.

11 That's going to vary a little bit from  
12 individual to individual. I think it is  
13 important to consider what that means for  
14 students, especially in special education, and  
15 their circumstances.

16 But essentially you -- you fail to  
17 maximize their learning and the benefits of  
18 learning.

19 Q. So, Dr. Wiley, what I want to do next  
20 is I want to quickly run through a list of  
21 factors, and the question's going to be the same  
22 for each.

23 A. Okay.

24 Q. In your opinion-- the question is, in  
25 your opinion, is this an indicator of special



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1 education practiced badly.

2 A. Okay.

3 Q. And my hope is to start briefly with  
4 yes or no, and then we can break down a little  
5 bit more afterwards.

6 A. Okay.

7 Q. Okay. So is -- in your opinion is the  
8 use of corporal punishment an indicator of  
9 special education practiced badly?

10 A. Yes.

11 Q. Is -- in your opinion is seclusion of  
12 students an indicator of special education  
13 practiced badly?

14 MS. JOHNSON: Object to form.

15 Q. You can answer.

16 A. I'm going to -- I'm sorry. I can't  
17 get that in a yes or a no, because I think that  
18 the focus in the field is greatly reducing, if  
19 not eliminating, the use of seclusion.

20 But I think that done appropriately  
21 that it can be a part of effective special  
22 education for some students.

23 Q. In your opinion is the use of physical  
24 restraints as a punishment an indicator of  
25 special education practiced badly?

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1 A. As a punishment, yes.

2 Q. In your opinion is -- are poorly  
3 maintained facilities an indicator of special  
4 education practiced badly?

5 MS. JOHNSON: Object to form.

6 A. I have a hard time speaking to that  
7 one because, again, I think any school should  
8 have basic cleanliness and safetiness. I don't  
9 know how that attaches to special education  
10 directly. That's why I'm pausing with that one.

11 Q. If I said if it is an indicator of  
12 education practiced badly.

13 A. It could be education.

14 Could be an example of building  
15 maintenance practiced badly. I don't know.

16 Q. In your opinion are -- is  
17 overutilization of computer-based learning an  
18 indicator of special education practiced badly?

19 MS. JOHNSON: Object to form.

20 A. If -- yeah. I mean, if you're -- I  
21 mean, you're sort of -- baked it in there. I  
22 mean, if it's being overused, then I would  
23 assume it's not being used effectively.

24 Q. Is the removal -- in your opinion is  
25 the removal of learning materials as a

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1 punishment special education practiced badly?

2 A. As a punishment? I would have to look  
3 at that one more closely. I need more context.

4 Q. In your opinion is a failure to  
5 provide behavioral supports identified in a  
6 student's IEP an example of special education  
7 practiced badly?

8 A. You have to provide the supports that  
9 are identified in the IEP.

10 Q. Is that a yes, then?

11 A. So, yes, if you're not implementing  
12 the IEP, then ...

13 Q. Is the failure to individualize or  
14 update a student's IEP an example of special  
15 education practiced badly?

16 MS. JOHNSON: Object to form.

17 A. A failure to individualize or update.  
18 So individualize -- it should be based  
19 on the individual needs of the student.

20 Update. You want to clarify that for  
21 me? Like a three-year evaluation? What do you  
22 mean by "update"?

23 Q. Just periodically update in accordance  
24 with the needs of the student.

25 A. Yeah. So if the needs of the student

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1 changes, such that the IEP changes, then you  
2 have to update it.

3 Q. Is the failure to provide FBAs or BIPs  
4 for students with serious behavior-related  
5 disabilities an example of special education  
6 practiced badly?

7 A. Not necessarily.

8 Q. Okay. Is the failure to have FBAs  
9 conducted by qualified personnel an example of  
10 special education practiced badly?

11 A. People who know how to do functional  
12 behavior assessments should be the ones that are  
13 conducting FBAs and developing BIPs.

14 Q. Is the failure to base FBAs on  
15 appropriate data an example of special education  
16 practiced badly?

17 A. Yeah. I mean, the functional behavior  
18 assessment has to be based on reliable and valid  
19 data.

20 Q. Is the failure to train teachers and  
21 other staff who work with students with  
22 behavior-related disabilities on effective  
23 strategies based on a student's BIP an example  
24 of special education practiced badly?

25 MS. JOHNSON: Object to form.

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1 A. So I think that implementing a BIP  
2 badly would be an example of.

3 Q. And so a failure to implement a BIP  
4 with fidelity would be an example of special  
5 education practiced badly?

6 A. It would be, yep. An example of  
7 implementing the BIP badly.

8 And I also put that -- because there's  
9 an assumption in MTSS that kids who don't have  
10 an IEP and who are not receiving special  
11 education could get an FBA or a BIP.

12 Q. So you answered a slightly different  
13 question. You said it's an example of  
14 implementing the BIP badly.

15 A. Right.

16 Q. But would you also agree that's an  
17 example of --

18 A. Yeah, --

19 Q. -- special education --

20 A. -- part of their --

21 Q. -- practiced badly?

22 A. Yeah. Yeah. I would say that.

23 Q. Thank you.

24 Would you say the failure to evaluate  
25 the fidelity of BIP implementation is an example

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1 of special education practiced badly?

2 A. It's a good idea to evaluate  
3 implementation, you know, for a BIP to work and  
4 also to make sense of whether the student does  
5 or does not make progress. It's important to  
6 know whether or not the BIP was being  
7 implemented.

8 Q. Okay.

9 A. And I think that would be fidelity.  
10 And it's -- so I don't mean to take  
11 you off task, but, you know, when I was a  
12 behavior specialist and -- I worked with schools  
13 to develop BIPs, and then I would consult with  
14 them on implementing it.

15 And then I would come back and we  
16 would look at progress monitoring data. The  
17 first question was always are we implementing  
18 the behavior intervention plan.

19 Because if they weren't or they were  
20 doing it inconsistently, then it's hard to know  
21 well, was the lack of progress because it was  
22 the wrong BIP or was it because it wasn't  
23 implemented consistently.

24 So I think evaluating -- and there are  
25 a lot of different ways to do that, by the way.

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1 I don't want to also make the assumption that  
2 you would have to use, like, tiered fidelity.  
3 That's more like at a school level, tier three.

4 But you want to have a way -- you want  
5 to have a way, it could even just be a  
6 checklist, to be able to say are we implementing  
7 the BIP.

8 Q. In your opinion is a lack of certified  
9 behavioral or therapeutic staff or students with  
10 serious behavior-related disabilities an example  
11 of special education practiced badly?

12 A. So break out for me the staff you're  
13 talking about.

14 Q. Behavioral or therapeutic staff.

15 A. Are you talking about, like,  
16 board-certified behavior analysts?

17 Q. That would be an example, yes.

18 A. Registered behavior technicians,  
19 school psychologists, --

20 Q. Exactly.

21 A. -- counselors, special ed teachers.

22 Q. It could be inclusive of any of those.

23 A. Oh, okay. You have to have people who  
24 have expertise. I think that that's not really  
25 well-defined in the field.

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1                   And certainly one of the challenges  
2   for implementation is ensuring there's  
3   sufficient behavioral expertise to maximize  
4   implementation. Yeah.

5       Q.       And, similarly, would you agree that a  
6   lack of certified instructional staff would be  
7   an example of special education practiced badly?

8       A.       Yeah. You want to have people who are  
9   sufficiently trained to provide special  
10   education. I would say that's a challenge not  
11   only we're dealing with in general, but for kids  
12   with behavior-related disabilities. It's a  
13   particularly pronounced problem everywhere.

14      Q.       Would you say a lack of differentiated  
15   instruction based on ability and targeted needs  
16   is an example of a special education practiced  
17   badly?

18      A.       Differentiated instruction is not a  
19   research-based practice.

20      Q.       Okay.

21      A.       It has many meanings to many different  
22   people. I think it's better to talk about  
23   tiered instruction of increasing intensity. And  
24   so we want to make sure that students are  
25   receiving instruction at a sufficient intensity



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1 for their academic needs.

2 Q. I'm getting to the end here. I  
3 promise.

4 A. That's fine.

5 You said differentiated instruction.  
6 Did you say one other thing? I just want to  
7 make sure I ...

8 Q. Based on ability and targeted needs.

9 A. Oh, ability and targeted needs, yeah.  
10 Targeted needs, yeah.

11 Q. Would you say that a categorical lack  
12 of access to curricula for art, music, PE, or  
13 other electives is an example of special  
14 education practiced badly?

15 A. So students don't have access to PE or  
16 to art or to music. I'm not quite sure exactly  
17 what that means.

18 And it's funny because it's in an area  
19 of special ed that I wish we had more research  
20 on. I know it doesn't all have to relate to  
21 research, but, you know, how do we support kids  
22 with disabilities in music and art and things  
23 like that.

24 I mean, I think that kids should have  
25 art and PE and music in the elementary grades.

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1 I think when you get older, then -- like I'm  
2 thinking about high schoolers. It really  
3 depends what they do. Right. Band or graphic  
4 arts or -- anyway.

5 Q. And you said that you think that kids  
6 should have access to art and PE and music in  
7 the elementary grades. Is that true regardless  
8 of whether or not the student has disabilities?

9 A. Yeah. I mean, you're relating it to  
10 special education in an interesting way. So if  
11 you're saying should students have -- with  
12 disabilities have access to art and music and  
13 PE -- but I also, because I'm not an expert in  
14 those areas, I imagine that those could take a  
15 number of different forms.

16 Q. Sure.

17 A. And may even need to be specialized in  
18 a way for kids with more intensive needs.

19 But go ahead. Sorry.

20 Q. Thank you.

21 Dr. Wiley, would exclusion from  
22 extracurricular activities -- categorical  
23 exclusion from extracurricular activities be an  
24 example of special education practiced badly?

25 A. Yeah, I don't think you can exclude

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1 kids from extracurricular activities because  
2 they have a disability.

3 Now, you may have other individualized  
4 reasons for looking at that, but I'm pretty sure  
5 that that's explicitly addressed in IDEA;  
6 extracurricular activities.

7 Q. Would reduced instruction time to  
8 accommodate long bus rides to and from school be  
9 an example of special education practiced badly?

10 A. Reducing instruction time so that  
11 students have less instruction because of a -- I  
12 think that would need a close look.

13 Again I'm not sure. I probably have  
14 to look at a specific context. But I don't  
15 think that that would be -- you know, so when  
16 I'm talking about practice of special education,  
17 I want to make sure that kids have sufficient  
18 instruction. Right. In that sense if that's  
19 somehow being unnecessarily constrained, then  
20 that would not be good.

21 Q. It would be concerning?

22 A. It would be concerning, yeah. Require  
23 a closer look to understand the context.

24 Q. And, to round us off, would a failure  
25 to coordinate with external providers of

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1 community-based behavioral health services for  
2 students with behavior-related disabilities be  
3 an example of special education practiced badly?

4 A. So I think that this goes to related  
5 services. And if students need related services  
6 in order to benefit from special education, then  
7 that's what's required in special education  
8 practice.

9 In terms of wraparound services,  
10 again, I think that that's been a model that's  
11 been in the field for a long time. It's existed  
12 in children's mental health. I think right now  
13 we're just getting to the point of figuring out  
14 how to do wraparound services really  
15 effectively.

16 So I'm hemming and hawing on that one  
17 just because I think that absolutely if there's  
18 a related service that's identified in the IEP  
19 that's definitely part of special education.

20 I think the PBIS wraparound thing is  
21 new and evolving, and I hope it continues to  
22 grow and becomes clearer how we can implement  
23 those.

24 Q. Thank you.

25 A. Yeah.

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1 Q. I want to touch base really quick on  
2 the discussion around seclusion.

3 A. Okay.

4 Q. Dr. Wiley, how would you define  
5 appropriate use of seclusion of students with  
6 disabilities?

7 A. Well, I know that in Ohio, for  
8 example, there are laws and regulations  
9 regarding the use of seclusion, and I think  
10 a lot of those present important guardrails for  
11 the safe use of restraint, the safe use of  
12 seclusion.

13 Q. Do you know whether the state of  
14 Georgia has any laws around the use of  
15 seclusion?

16 A. I would assume that it has some  
17 regulations around the use of -- and I think in  
18 most states, but I don't have this as part of my  
19 report, they tend to be more regulated than  
20 outright banned.

21 I know that in my experience we had a  
22 seclusion room and we took data on restraints  
23 and seclusion, and a consistent goal of our  
24 crisis intervention was to reduce both. Reduce  
25 the use of restraint, reduce the use of

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1 seclusion and the time in either. Right. And  
2 we did that in my time in that role. It was an  
3 explicit goal.

4 And -- but, however, there were times  
5 when -- and I think everybody acknowledges this.  
6 It's not restrained as punishment, but safe  
7 restraint in order to keep the child safe or the  
8 student safe and other people safe that could be  
9 used. And seclusion could also be used in that  
10 way as well, as a safe way to protect the  
11 student.

12 So the -- some of the things when you  
13 say what would be appropriate use, the door  
14 should not lock on its own. You should be able  
15 to always view the student. So the seclusion  
16 rooms I've seen, you have a way of seeing what's  
17 going on with the student. You should never  
18 leave the student. You know, like leave the  
19 room, the seclusion room.

20 So if you're talking about those kinds  
21 of things, there are guardrails around the safe  
22 use of seclusion.

23 In the field I think there's agreement  
24 that we want to reduce that as much as possible,  
25 but it's not clear that we could say hey, it's

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1 possible to educate every student with  
2 behavior-related disabilities without ever using  
3 restraint or every using seclusion. That's just  
4 not the reality of some of these kids that we  
5 work with. But we want to do it safely and  
6 ethically and according to professional  
7 guidelines.

8 Q. And, in your opinion, would it be  
9 appropriate to seclude students for  
10 disability-related behaviors?

11 A. So disability-related behaviors.  
12 There is a legal mechanism for that, right,  
13 manifestation, determination where we say was  
14 the behavior a manifestation of that student's  
15 disability.

16 I think that's an interesting one to  
17 bring up, because when you talk about kids with  
18 emotional, behavioral disorders, sort of parsing  
19 out.

20 So let me take a -- if it's seclusion  
21 for a disability-related behavior that is not  
22 harmful to the student or to others, then that  
23 would be inappropriate.

24 Does that make sense?

25 Q. How would you determine whether or not

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1 seclusion of a student with behavior-related  
2 disabilities is appropriate?

3 A. Is the student making progress. I  
4 mean, I think all the other indicators that we  
5 use to say is the behavior decreasing. Is the  
6 student able to participate in instruction more.

7 I know that in my experience that was  
8 done as well. But I'll give you the one example  
9 of our 25 students in the special school. There  
10 was one student who actually had a tumor in his  
11 brain that later was -- after I left was  
12 surgically removed. Some of his behaviors were  
13 aggressive and at times violent, and they really  
14 were in some ways beyond his control.

15 So my point is this, that we needed to  
16 use seclusion probably more than any other kid  
17 with, you know, in that program. More than we  
18 would have expected to or wanted to.

19 So there's that asterisk of saying we  
20 would want to see that overall that student is  
21 making progress behaviorally, reducing those  
22 problem behaviors and those kinds of things. So  
23 data would be the thing that would tell us.

24 Understanding that there may be some  
25 kids who it is not a straight arrow. Right.



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1 It's like we're using seclusion as part of --  
2 that's the other part, too. It has to be part  
3 of a comprehensive program. If you're using  
4 just restraint and seclusion without any kind of  
5 positive reinforcement or other kinds of  
6 positive programming, that's not acceptable and  
7 that would be bad practice.

8 Q. And to make sure I'm understanding.  
9 To paraphrase you again, you're saying that  
10 seclusion without showing improvement as part of  
11 the programming for the child would be  
12 inappropriate?

13 A. You would need to revisit and say --  
14 and so my focus in the time that I was at my  
15 school and I was in crisis resource, again, we  
16 kept that data and it was something that we  
17 reviewed.

18 And what was neat about my experience  
19 at that school was we did make changes that were  
20 able to reduce seclusion and restraint  
21 dramatically. So it should be a focus of  
22 programming, both individual, but also in --  
23 overall in the school.

24 So, yeah, if you were using seclusion,  
25 you should also be thinking about what are the

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1 other things we need to address upstream from  
2 this behavior in order to make it less likely  
3 that they become so aggressive or, you know,  
4 violent, to the point where they could be a harm  
5 to themselves or to others.

6 Is that making sense?

7 Q. That does. Thank you.

8 MR. GILLESPIE: Crystal, do you  
9 have anything?

10 I'll pass the witness.

11 MS. JOHNSON: I do not have any  
12 questions for you. I think we can go --

13 MR. GILLESPIE: I can think up some  
14 others if you want.

15 We can go off the record.

16 THE VIDEOGRAPHER: Off the record,  
17 5:25.

18 - - - - -

19 (A discussion was held off the record.)

20 - - - - -

21 THE VIDEOGRAPHER: We're back on  
22 the record, 5:26.

23 MR. GILLESPIE: Just to note that  
24 we'll want to order a copy of the  
25 transcript.

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1 MS. JOHNSON: And Dr. Wiley will  
2 read and sign.

3 COURT REPORTER: Do you want a  
4 copy?

5 MS. JOHNSON: Please. Yes. E-tran  
6 is fine.

7 THE VIDEOGRAPHER: Off the record,  
8 5:26.

9 - - - - -

10 (Deposition concluded at 5:26 p.m.)

11 - - - - -

12 SIGNATURE:

13 The Deponent will read and sign the  
14 transcript of said deposition.

15 - - - - -

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REPORTER CERTIFICATE

The State of Ohio, )

) SS:

County of Cuyahoga. )

I, Sarah R. Drown, a Registered Diplomat Reporter, Certified Realtime Reporter, and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, ANDREW WILEY, Ph.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment. I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

HEREBY, I attest to and certify the aforementioned on this 13th day of November, 2023.



Sarah R. Drown, RDR, CRR  
Notary Public, State of Ohio  
Commission expiration: 04-22-27

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DEPOSITION ERRATA SHEET

Our Assignment No. J10416168

Case Caption: UNITED STATES OF AMERICA vs. STATE OF  
GEORGIA

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have  
read the entire transcript of my deposition taken  
in the above-captioned matter or the same has been  
read to me, and the same is true and accurate, save  
and except for changes and/or corrections, if any,  
as indicated by me on the DEPOSITION ERRATA SHEET  
hereof, with the understanding that I offer these  
changes as if still under oath.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
ANDREW WILEY, Ph.D.

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